



# OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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**DIRECTIVE NUMBER:** STD 06-00-002

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**SUBJECT:** Variance Program Policies, Procedures, and Guidelines

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**DIRECTORATE:** Technical Support and Emergency Management

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## ABSTRACT

- Purpose:** This Instruction sets forth policies, procedures and interpretations that supplement and clarify Sections 6 and 16 of the Occupational Safety and Health Act of 1970 and rules in 29 CFR 1905 and 1904 involving employers, or classes of employers requesting variances to deviate from the requirements of an OSHA standard, under specified conditions, for specific workplaces.
- Scope:** This Instruction applies to all OSHA offices engaged in or supporting the operations of the OSHA Variance Program.
- References:** The Occupational Safety and Health Act of 1970; 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses; 29 CFR 1905, Rules of Practice; OSHA Instruction CSP 01-00-005, State Plan Policies and Procedures Manual; Approved State Plans for Enforcement of State Standards; CPL 02-00-164, OSHA Field Operations Manual.
- Cancellations:** OSHA Instruction CPL 02-00-009 [CPL 2.9], Inspections of Granted Variances, October 30, 1978; STD 06-00-001 [STD 6.1], Variance Policy and Procedures, October 30, 1978; CSP 01-02-001 [STP 2-4.9A], Utilization of Federal Variance Processing System for Monitoring of Approved State Plans, January 30, 1981, OSHA Variance Information Handout, June 16, 1993;
- State Impact:** Notice of Intent and Equivalency required. See paragraph VIII, State Plan Impact.
- Action Offices:** National, Regional, and Area Offices, OSHA Training Institute, and State Plans.

**Originating Office:** Directorate of Technical Support and Emergency Management

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By and Under the Authority of

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Assistant Secretary

## **Executive Summary**

This instruction provides policies, procedures, and instructions that supplement and clarify the Variance Program Rules at 29 CFR 1904 and 29 CFR 1905 as well as Sections 6 and 16 of the OSH Act. In addition, this Directive establishes procedures for processing applications for variances, conducting reviews of variance applications, making determinations of variance applications, and managing granted or denied variance applications.

## **Significant Changes**

This instruction updates the policies, procedures, and instructions previously found in OSHA Instruction CPL 02-00-009 [CPL 2.9], Inspections of Granted Variances, October 30, 1978; STD 06-01-001 [STD 6.1], Variance Policy and Procedures, October 30, 1978; CSP 01-02-001 [STP 2-4.9A], Utilization of Federal Variance Processing System for Monitoring of Approved State Plans, January 30, 1981. Significant updates include:

1. Descriptions of the variance types which regulations identify and their respective applicability.
2. Updates to the variance application, review, and decision-making process.
3. Updates to the monitoring procedures for interim orders and permanent variances.
4. A description of the responsibilities of personnel involved in the review of variance applications.
5. Updates to the Variance Termination/Variance Withdrawal Process.

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## I. Purpose.

Sections 6 and 16 of the Occupational Safety and Health Act of 1970 (OSH Act), and the implementing rules contained in the Code of Federal Regulations (29 CFR 1905 and 1904.38), authorize variances from the Occupational Safety and Health Administration (OSHA) standards and rules. OSHA's Variance Program is implemented in accordance with 29 CFR 1905 and 1904.38.

A variance is permission granted to an employer to deviate from the requirements of an OSHA standard rule or other requirement under specified conditions. A variance does not provide an outright exemption from a standard, except in cases involving national defense. An employer or class of employers may request a variance for any specific workplace(s). Employers may seek a variance if they wish to use methods, equipment, or facilities that they believe protect workers as well as, or better than, OSHA standards. For purposes of this Instruction, variance applications or petitions are requests from employers for variances from OSHA standards, rules or other requirements.

This Instruction sets forth procedures and policies under which OSHA receives, reviews, and makes determinations on applications for variances from OSHA standards or rules. The guidelines specified within this Instruction are policies and procedures that supplement: (1) procedures addressing the application and granting of variances under the variance program rules in 29 CFR 1904.38 and 1905; (2) the coordination of review of variance applications within OSHA offices; and (3) the monitoring and inspection of worksites at which OSHA has granted interim orders and permanent variances.

## II. Organization of Directive

- A. Chapter 1 describes general information about the Variance Program and this Directive.
- B. Chapter 2 describes requirements of each of the five types of variances which OSHA administers under the Variance Program.
- C. Chapter 3 describes procedures associated with the review of variance applications before making a determination recommendation to the Assistant Secretary of Labor for Occupational Safety and Health to approve or deny the applications.
- D. Chapter 4 describes administrative procedures associated with developing *Federal Register* notices to announce variance applications, preliminary decisions on the applications, and the grant of interim orders.

- E. Chapter 5 describes administrative procedures associated with performing monitoring activities of employer(s) for which OSHA grants interim orders and permanent variances.
- F. Chapter 6 describes Variance Program administrative procedures associated with OSHA's developing *Federal Register* notices to announce the final decision on variance applications.
- G. Chapter 7 describes Variance Program administrative procedures associated with OSHA's developing *Federal Register* notices to terminate or revoke existing permanent variances.
- H. Chapter 8 describes the procedures for requesting and conducting hearings related to variance applications.
- I. Chapter 9 describes Variance Program activities related to federal agencies and federal contractors.
- J. Appendix A – presents definitions of terms used in this Directive.
- K. Appendix B – presents Variance Program forms.

### **III. Scope**

This Instruction applies OSHA-wide.

### **IV. References.**

- A. The Occupational Safety and Health Act of 1970.
- B. 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses.
- C. 29 CFR 1905, Rules of Practice.
- D. OSHA Instruction CSP 01-00-005, State Plan Policies and Procedures Manual.
- E. CPL 02-00-164, OSHA Field Operations Manual.

### **V. Cancellations.**

- A. OSHA Directive STD 6.1, Variance Policy and Procedures, dated October 30, 1978.

- B. OSHA Directive CPL 2.9, Inspection of Granted Variances, dated October 30, 1978.
- C. OSHA Instruction STP 2-4A – Utilization of Federal Variance Processing System for Monitoring of Approved State Plans, dated January 30, 1981.
- D. OSHA Variance Information Handout, dated June 16, 1993.

## **VI. Responsibility**

- A. Director of the Office of Technical Programs and Coordination Activities (OTPCA)
  - 1. Administers the Variance Program under authority from the Directorate of Technical Support and Emergency Management (DTSEM) Director.
  - 2. Establishes and ensures compliance with policies and procedures for the Variance Program; proposes modifications to and clarifications of this Directive to the DTSEM Director, as needed.
  - 3. Ensures the performance of all activities necessary for processing variance applications, including the preparation of *Federal Register* notices required for activities under the Variance Program.
  - 4. Under direction of DTSEM Director, coordinates with Director of the Directorate of Construction (DOC), Director of the Directorate of Enforcement Programs (DEP), and Regional Administrators (RA) to perform monitoring activities for variance applicants and employers with granted variances.
- B. Director of Directorate of Technical Support and Emergency Management (DTSEM)
  - 1. Oversees the administration of OTPCA.
  - 2. Reviews policies and procedures and makes recommendations to the Assistant Secretary for the Variance Program, including, but not limited to, proposed modifications to and clarifications of this Directive.
  - 3. Reviews Variance Program-related *Federal Register* notices which OTPCA prepares and submits Variance Program-related *Federal Register* notices to the Assistant Secretary for approval, following review and concurrence by OSHA



Directorates (DCSP, DEP, DOC and DSG as appropriate), impacted RAs, and the Office of the Solicitor (SOL).

4. Collaborates with DEP, DOC, and RAs to arrange onsite visits to monitor alternative methods of compliance and engineering controls described in variance applications and conditions outlined in interim orders and variances granted by the OSHA Assistant Secretary.

C. Director of Directorate of Cooperative and State Programs (DCSP)

1. Assigns staff to serve as representatives on the Technical Review Team (TRT) that reviews variance applications affecting State Plans.
2. Coordinates the participation of State Plan staff on TRTs that reviews Multi-State variances applicable to their State Plan.
3. Reviews and shares variance-related *Federal Register* notices with State Plans.
4. Coordinates requests for approval as appropriate from State Plans for Multi-State applications.

D. Director of Directorate of Construction (DOC)

1. Assigns staff to serve as representatives on the TRT that reviews variance applications.
2. Reviews Variance Program-related *Federal Register* notices which OTPCA prepares.
3. Collaborates with DTSEM and OSHA Regional and Area Offices to review the results of monitoring inspections of employers' worksites at which an interim order or variance is in effect.

E. Director of Directorate of Standards and Guidance (DSG)

1. Assigns staff to serve as representatives on the TRT that reviews variance applications.
2. Reviews Variance Program-related *Federal Register* notices.

F. Director of Directorate of Enforcement Programs (DEP)

1. Assigns staff to serve as representatives on the TRT that reviews variance applications.
2. Reviews Variance Program-related *Federal Register* notices.
3. Collaborates with DTSEM and OSHA Regional and Area Offices to schedule and perform monitoring inspections of employer worksites at which an interim order or variance is in effect.

G. Office of the Solicitor (SOL)

1. Reviews and approves Variance Program-related *Federal Register* notices for legal issues and requirements.
2. Reviews and approves policies and procedures for the Variance Program, including changes.
3. Provides legal advice on other regulatory or legal issues regarding the implementation of the Variance Program.

H. Regional Administrators (RA)

1. Reviews variance applications which OTPCA receives.
2. Provides assistance to DTSEM in the evaluation of variance applications.
3. Coordinates and conducts variance assessment investigations at applicant worksites and variance-monitoring inspections at employer worksites where an OSHA granted interim order or variance is in effect.
4. Reviews Variance Program-related *Federal Register* notices which DTSEM prepares.
5. Provides recommendations to DTSEM for approval or denial of variance applications.

6. Ensures that Area Office staff report to DTSEM information impacting OSHA-approved variances or variance applicants within the coverage of the Area Office.

I. Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary)

1. Reviews and approves Variance Program-related *Federal Register* notices.
2. Makes preliminary and final determinations on the approval or revocation of variances.
3. Reviews and approves policies and procedures for the Variance Program, including, but not limited to, proposed modifications to, and clarifications of, this Directive.
4. Grants experimental variances when the Secretary of Labor determines or the Secretary of Health and Human Services certifies that a variance is necessary for an employer(s) to participate in an experiment to validate or test new techniques to safeguard the health and safety of workers.

**VII. Action Offices.**

A. **Responsible Office.**

Directorate of Technical Support and Emergency Management (DTSEM); Office of Technical Programs and Coordination Activities (OTPCA).

B. **Action Office.**

National, Regional and Area Offices.

C. **Information Offices.**

National Office Directorates, Regional Offices, State Plans, Office of Communications, OSHA Training Institute.

**VIII. Federal Program Change/State Plan Impact.**

- A. Notice of Intent and Equivalency Required. This Instruction describes a Federal Program Change which establishes policies and procedures regarding the processing of applications for variances from OSHA standards and regulations. States with OSHA-approved State Plans are required to have their own variance

application and approval process that is at least as effective as the process in this Instruction.

Within 60 days of the effective date of this directive, a State Plan must submit a notice of intent indicating to DCSP-Office of State Programs (OSP) if the State Plan will adopt or already has in place policies and procedures that are identical to or different from the federal program. State adoption, either identical or different, should be accomplished within six months. If adopting identically, the State Plan must provide the date of adoption to DCSP-OSP within 60 days of adoption. If the State Plan adopts or maintains policies that differ from those in this instruction, the policies must be available for review. Within 60 days of adoption, the State Plan must provide DCSP-OSP an electronic copy of the policy or a link to where their policies are posted on the State Plan's website. The State Plan must also provide the date of adoption and identify differences, if any, between their policy and OSHA's. OSHA will provide summary information on the State Plan responses to this instruction on its website.

#### **IX. Significant Changes.**

In this Directive, OSHA updates the policies, procedures, and other functions associated with processing variance applications, as well as monitoring variances the Assistant Secretary grants. Significant updates include:

1. Descriptions of the variance types which regulations identify and their respective applicability.
2. Description of the variance application, review, and decision-making process.
3. Updates to the monitoring procedures for interim orders and permanent variances.
4. A description of the responsibilities of personnel involved in the review of variance applications.
5. Updates to the Variance Termination/Withdrawal Process.

## Chapter 1 – Introduction

The purpose of this Chapter is to outline the five types of variances OSHA’s statutory authority and implementing regulations define. Sections 6(b)(6)(A), 6(b)(6)(C), 6(d), and 16 of the [Occupational Safety and Health Act of 1970](#) (OSH Act) authorize the granting of variances from OSHA standards. OSHA regulations at [29 CFR 1905](#) establish rules of practice regarding applications for variances under OSH Act sections 6(b)(6)(A), 6(d), and 16. Variances from OSHA’s work-related injury and illness recordkeeping requirements are outlined in [29 CFR 1904.38](#).

A variance is permission granted to an employer to deviate from the requirements of an OSHA standard, rule or other requirement under specified conditions. A variance does not provide an outright exemption from a standard, except when OSHA determines a complete exemption is necessary for national defense. An employer or class of employers may request a variance for any specific workplace. There are several different types of variances. The most common is a permanent variance under Section 6(d) of the OSH Act, which permits an employer to use alternative conditions, practices, means, methods, operations, or processes if they demonstrate it will protect workers as well as (i.e., be “as safe and healthful as”) or better than a specified OSHA standard or standards. Other types of variances, including temporary, experimental, national defense, and recordkeeping variances, have different requirements, described in Chapter 2 below. Variances are employer and site-specific.

As part of its variance application, an employer may also request an interim order to be effective until OSHA makes a final decision on the variance application. An interim order allows an employer to continue operating under the conditions proposed in the application, along with any additional conditions, until OSHA makes a final decision on the variance application. OSHA grants an interim order before granting a permanent variance.

OSHA requires employers applying for variances to provide in their applications detailed and comprehensive documentation to support their application. When an employer makes an application for a variance, OSHA staff reviews the information contained in the application and determines whether the application should be granted or denied. Once the determination is made, the Assistant Secretary makes the final decision to grant or deny the variance application.

Employer(s) submitting variance applications have the burden to establish by a preponderance of the evidence that their application meets the requirements and conditions for receiving the type of variance requested. Preponderance of the evidence is a legal standard of proof meaning more likely than not (i.e., greater than a 50% probability) of being true. For the purposes of a permanent variance, an employer must submit evidence that, when OSHA considers it as a whole, convinces OSHA that the proposed alternative will, more likely than not, provide protection to workers that is at least as effective as the protection afforded to them by the existing OSHA standard from which the applicant is seeking a variance.

OSHA staff within DTSEM and DCSP, DOC, DEP, DSG, and SOL along with Regional and Area Offices as appropriate reviews and evaluates variance applications. The Assistant Secretary makes the final decision to grant or deny any variance application.

OSHA administers five types of variances under the OSH Act, which are covered in this Directive:

#### I. Permanent Variance

Section 6(d) of the OSH Act authorizes permanent variances from OSHA standards. Employer(s) may apply for a permanent variance by following the requirements set forth in 29 CFR 1905.11. Among other requirements, in completing an application for a permanent variance, the employer(s) must:

- A. Include a statement showing how their alternative conditions, practices, means, methods, operations, or processes will provide affected workers with safety and health protection that is equal to or greater than the protection afforded to them by compliance with the applicable OSHA standard.
- B. Notify workers of the permanent variance application and their right to request a hearing on the application.

In response to the permanent variance application, OSHA may:

- A. Deny the application as deficient because it does not meet the requirements of 29 CFR 1905.11; or
- B. Publish a *Federal Register* notice announcing the employer's application for the permanent variance. This *Federal Register* notice may also announce the Assistant Secretary's preliminary determinations on the application, if any, and the Secretary's decision regarding any request for an interim order. This *Federal Register* notice also invites interested persons to submit comments on the application and inform affected employers, employees, and appropriate State authorities having jurisdiction over employment or places of employment of their right to request a hearing.

After publishing the initial *Federal Register* notice, OSHA will complete its review of the application and may:

- A. Publish a *Federal Register* notice granting a permanent variance if OSHA has determined that the alternative method of compliance identified in the variance

application provides a workplace that is as safe and healthful as it would be when the employer complies with the applicable standard. A permanent variance supersedes any interim orders OSHA previously granted; or

- B. Publish a *Federal Register* notice denying a permanent variance request because the application does not provide an alternative that is “as safe and healthful” as the protections provided in the standard.

## II. Temporary Variance

Section 6(b)(6)(A) of the OSH Act authorizes temporary variances from newly published OSHA standards. A temporary variance provides short-term relief for employer(s) who cannot comply with a new OSHA standard by its effective date. An employer(s) can seek this relief because they cannot complete the necessary construction or alteration of the facility in advance of the effective date of the new standard, or when technical personnel, materials, or equipment are temporarily unavailable. The employer(s) must submit the application for a temporary variance before the effective date of the new standard. An employer(s) may apply for a temporary variance by following the procedures set forth in 29 CFR 1905.10.

For OSHA to grant a temporary variance, an employer(s) must establish that:

- A. The employer(s) cannot comply with the standard by its effective date because of the unavailability of professional or technical personnel, materials or equipment, or because it cannot complete needed construction on time;
- B. Until the employer(s) achieves compliance with the new standard, the employer(s) is taking all available steps to protect its workers against the hazard covered by the new standard; and
- C. The employer(s) will achieve compliance with the standard as quickly as possible with a timeline to achieve compliance.

In response to the temporary variance application, OSHA may:

- A. Deny the application as deficient because it does not meet the requirements of 29 C.F.R. 1905.10, including items A, B, and C above;
- B. After providing public notice and an opportunity for a hearing, publish a *Federal Register* notice granting a temporary variance to delay compliance with the new standard until the employer can achieve compliance with the new standard. OSHA may issue an interim order to be effective until a decision is made on the

application. A temporary variance may remain in effect only for the time needed to achieve compliance with the standard(s) requested in the temporary variance application, but for no longer than one year.

OSHA may grant a renewal of the temporary variance provided the employer files an application for renewal at least 90 days before the expiration date of the temporary variance. OSHA may extend a temporary variance twice, but only for a maximum of 180 days per extension.

### III. Experimental Variance

Section 6(b)(6)(C) of the OSH Act authorizes the Assistant Secretary to grant experimental variances from OSHA standards. OSHA grants such variances when the Secretary of Labor determines, or the Secretary of Health and Human Services certifies, that a variance is necessary for an employer(s) to participate in an experiment to demonstrate or validate new and improved techniques to safeguard the safety or health of workers. An employer(s) may submit an application to OSHA to apply for an experimental variance. The application shall include the following information:

- A. Describe in detail the proposed experimental design;
- B. Describe how performing the experiment will demonstrate that workers will receive safety and health protection that is at least equal to the protection they would be afforded by compliance with the applicable OSHA standard(s);
- C. Indicate that the employer(s) obtained a written statement, which each worker who agrees to participate in the proposed experiment signed, stating the worker does so knowingly, willingly, and voluntarily;
- D. Provide certification that the employer(s) informed workers of the plan of the proposed experiment, its attendant risks, and each employee's right to terminate their participation in the experiment; and
- E. Provide any certification from the Secretary of Health and Human Services that the variance is necessary to permit the employer to participate in an experiment designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

In response to the experimental variance application, OSHA may:

- A. Grant an experimental variance, which authorizes the employer(s) to participate in an experiment to demonstrate or validate new and improved techniques to



safeguard the safety and health of their workers; or

- B. Deny the experimental variance application, if it is found that experimental efforts do not safeguard the safety and health of their workers.

#### IV. National Defense Variance

Section 16 of the OSH Act provides that OSHA may, on the record, after notice and an opportunity for a hearing, provide reasonable limitations and develop rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any and all provisions of the OSH Act when it finds it necessary and proper to avoid “serious impairment” of the national defense. OSHA refers to these “variations, tolerances, and exemptions” as National Defense variances. Only Federal OSHA may grant national defense variances.

An employer shall follow the procedures set forth in 29 CFR 1905.12 to apply for a national defense variance. A national defense variance may not be in effect for longer than six months without notification to affected employees and an opportunity for a hearing on the national defense variance application.

In response to a national defense variance application, OSHA may grant an interim order if the employer requested one, to be effective until a decision is rendered on the application for the limitation, variation, tolerance or exemption filed previously or concurrently.

#### V. Recordkeeping Variance

Section [1904.38](#) of OSHA’s Occupational Injury and Illness Recordkeeping regulation, 29 CFR 1904, includes procedures for employers to request a variance or exception from the recordkeeping requirements in 29 CFR 1904, “Recording and Reporting Occupational Injuries and Illnesses.” The regulation allows employer(s) to petition OSHA if they want to maintain records in a manner that is different from the approach required in 29 CFR 1904. Section 1904.38 requires employers to show that their alternate recordkeeping system:

- A. Collects the same information as required by 29 CFR 1904;
- B. Meets the purposes of the OSH Act; and
- C. Does not interfere with the administration of the OSH Act.

In response to the recordkeeping variance petition:

- A. OSHA will offer affected employees and their authorized representatives an opportunity to submit written data, views, and arguments about the petition. At its discretion, OSHA may also allow the public to comment on the variance petition by publishing the petition in the *Federal Register*. If the petition is published, the *Federal Register* notice will set a public comment period and may include a schedule for a public meeting on the petition.
- B. OSHA will review the petition and any comments received and will make a determination whether to grant the recordkeeping variance. If granted, OSHA will publish a notice in the *Federal Register* to announce the variance. The *Federal Register* notice will include the practices the variance permits, any conditions that apply, and the reasons for allowing the variance.
- C. If OSHA makes a determination to deny the recordkeeping variance requested, OSHA may publish a notice in the *Federal Register* to announce the decision to deny the variance petition. DTSEM, in collaboration with DCSP, DEP, DOC, DSG and SOL as appropriate will provide a written notification to the petitioner advising of OSHA's denial of the recordkeeping variance petition at the time that the *Federal Register* notice is published. Denial of a recordkeeping variance petition is without prejudice, and the employer may submit another petition if they develop an alternative method of compliance with the recordkeeping requirements that provides equivalency in coverage as OSHA.

## Chapter 2 – Requirements of Variance Applications

This Chapter describes the statutory requirements of each of the five types of variances administered under OSHA’s Variance Program.

While the requirements below are identified from the regulations in 29 CFR 1905 and 29 CFR 1904, employers seeking permanent variances must ensure that variance applications demonstrate that the alternative method of worker protection which the employer proposes would provide a workplace as safe and healthful as the requirements of the applicable standard(s).

### Applications for Variances

An employer, or class of employers, desiring a variance from a standard, or portion of a standard, authorized by Sections 6(b)(6)(A), 6(b)(6)(C), 6(d), or 16 of the OSH Act and OSHA’s implementing regulations, 29 CFR 1904 and 1905, may submit a written application to the Assistant Secretary.

#### I. Temporary Variance Applications

Variance applications submitted under Section 6(b)(6)(A) of the OSH Act and 29 CFR 1905.10 (Temporary Variances) shall include:

1. The name and address of the applicant;
2. The address of the place(s) of employment involved;
3. A specification of the standard or portion of the standard from which the applicant seeks a variance;
4. A statement from the applicant, with support from qualified persons with first-hand knowledge of the facts represented, that the employer(s) is unable to comply with the standard or portion of the standard by the effective date and a statement with detailed explanation of why they cannot comply;
5. A statement from the applicant on the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard(s) covered by the standard or portion of the standard;
6. A statement of when the applicant(s) expects to be able to comply with the standard and of what steps the employer(s) has taken and will take, with specific dates where appropriate, to come into compliance with the standard or portion of the standard;

7. A statement of facts from the applicant(s) to establish that:
  - a. The applicant(s) is unable to comply with a standard by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date.
  - b. The applicant(s) is taking all available steps to safeguard his employees against the hazards the standard covers; and
  - c. The applicant(s) has an effective program for coming into compliance with the standard as quickly as possible.
8. Any request for a hearing, if the applicant wishes to have a hearing on the variance application.
9. A certification that the applicant informed affected employees of the application. The certification must indicate that the applicant(s):
  - a. Provided a copy of the temporary variance application to their authorized employee representative(s); and
  - b. Posted a statement where the applicant(s) normally posts notices to employees which gives a summary of the temporary variance application and specifies where employees may obtain a copy of the application for examination (Note: The applicant may post the application in lieu of posting a summary of it).
10. A description of how affected employees have been informed of their right to petition the Assistant Secretary for a hearing.
11. When the requested variance would be applicable to worksites in more than one State, including a State with a State Plan approved under Section 18 of the OSH Act, and it involves a standard, or portion thereof, that is substantially identical to a State standard that is effective in the State Plan, the application shall include:
  - a. A side-by-side comparison of the Federal standard and the State Plan's standard;
  - b. A certification that the employer or employers have not filed for such variance on the same material facts for the same employment or place of employment with any State authority that has coverage over State Plan variance requests; and

- c. A statement as to whether the employer received citations for any violations related to State standards, or portion thereof, by any State authority, identified in the variance application(s), whether such citations are pending, and an identification of such citations, if applicable.

12. Any request for an interim order from the employer.

## II. Permanent Variance Applications

Variance applications submitted under Section 6(d) of the OSH Act and 29 CFR 1905.11 (Permanent Variances) shall include:

1. The name and address of the applicant.
2. The address of the place(s) of employment involved.
3. A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant.
4. A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought.
5. A certification that the applicant(s) informed affected employees of the application. The certification must indicate that the applicant(s):
  - a. Provided a copy of the permanent variance application to their authorized employee representative(s); and
  - b. Posted a statement where the applicant(s) normally posts notices to employees which gives a summary of the permanent variance application and specifies where employees may obtain a copy of the application for examination (Note: The applicant may post the application in lieu of posting a summary of it).
6. Any request for a hearing, if the applicant wishes to have a hearing on the variance application.
7. A description of how employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.
8. When the requested variance would be applicable to worksites in more than one State, including a State with a State Plan approved under Section 18 of the OSH Act, and it involves

a standard, or portion thereof, that is substantially identical to a State standard that is effective in the State Plan, the application shall include:

- a. A side-by-side comparison of the Federal standard and the State Plan's standard;
- b. A certification that the employer or employers have not filed for such Variance on the same material facts for the same employment or place of employment with any State authority that has coverage over State Plan variance requests; and
- c. A statement as to whether the employer received citations for any violations related to State standards, or portion thereof, by any State authority, identified in the variance application(s), whether such citations are pending, and an identification of such citations, if applicable.

9. Any request for an interim order from the employer.

### III. National Defense Variance Applications

Applications for limitations, variations, tolerances, or exemptions submitted under Section 16 of the OSH Act and 29 CFR 1905.12 (referred to as a national defense variance) shall include:

1. The name and address of the applicant.
2. The address of the place(s) of employment involved.
3. A specification of the provision of the Act or standard or portion of a standard from which the applicant seeks a variance.
4. A representation showing that the variance sought is necessary and proper to avoid serious impairment of the national defense.
5. Any request for a hearing.
6. A description of how employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.
7. Any request for an interim order from the employer.

### IV. Experimental Variance Applications

Variance applications submitted under Section 6(b)(6)(C) of the OSH Act (Experimental Variances) shall include:

1. The name and address of the applicant.
2. The address of the place(s) of employment involved.
3. A specification of the standard or portion of the standard from which the applicant seeks variance.
4. A detailed explanation of why the proposed experimental variance is necessary, including a detailed description of the risks and hazards associated with the experiment. This explanation shall also include how the applicant will provide an equivalent level of protection to workers during the experiment.
5. A detailed explanation of how the experimental variance will demonstrate or validate new and improved techniques to safeguard the health and safety of workers.
6. A detailed description of the proposed experiment, which must include:
  - a. Names and qualifications of the supervisor(s) of the experiment and the supervisor(s) and their staff (such as the staff conducting the experiment under the supervisor's watch) involved in the experiment; and
  - b. Proposed steps and duration of the experiment (in days), employee work time (in hours), and hours of machine operation (if applicable).
7. A detailed description of any similar experimentation or related research which the applicant or another party conducted. The statement shall include any available data, summaries, reports and evaluations (or a reference to) of such experimentation and research.
8. A signed letter or an official document indicating the Secretary of Health and Human Services has approved the experiment, if that is the case.
9. Written statement(s), signed by each employee who agrees to participate in the experiment, indicating that the employee does so knowingly, willingly, and voluntarily.
10. The applicant(s) certification that they have informed affected employees volunteering to participate in the experiment of the plan of the proposed experiment, its attendant risks, their right to terminate participation in the experiment, and their right to petition the Assistant Secretary for a hearing. This communication can be done using one or more means identified below:

- a. Giving a copy of the experimental variance application to the authorized employee representative(s), if applicable, and providing instructions concerning the employees' right to petition the Assistant Secretary for a hearing;
  - b. Posting a statement where the applicant(s) normally posts notices to employees giving a summary of the experimental variance application and specifying where its employees may obtain a copy of the application for examination, and providing instructions concerning the employees' right to petition the Assistant Secretary for a hearing (or, instead of a summary, posting the application itself); and
  - c. If the applicant used an alternate means (other than those described in a. and b. above) to inform its employees of the application and their right to petition the Assistant Secretary for a hearing, providing a detailed description of the alternate means used.
12. When the requested variance would be applicable to worksites in more than one State including a State Plan approved under Section 18 of the OSH Act, and it involves a standard, or portion thereof, that is substantially identical to a State standard that is effective in the State Plan, the applications shall include:
- a. A side-by-side comparison of the Federal standard and the State Plan's standard;
  - b. A certification that the employer or employers have not filed for such variance on the same material facts for the same employment or place of employment with any State authority that has coverage over State Plan variance requests; and
  - c. A statement as to whether the employer received citations for any violations related to State standards, or portion thereof, by any State authority, identified in the variance application(s), whether such citations are pending, and an identification of such citations, if applicable.

#### V. Recordkeeping Variance Petitions (Applications)

Variance petitions (applications) submitted under 29 CFR 1904.38 (Recordkeeping Variance) shall include:

1. The employer's name and address.
2. A list of the State(s) where the employer would use the variance.
3. The address(es) of the business establishment(s) involved.
4. A description of why the employer is seeking the variance.



5. A description of the different recordkeeping procedures the employer is proposes to use.
6. A description of how the proposed procedures will collect the same information collected under the 29 CFR 1904 requirements and achieve the purpose of the OSH Act; and
7. A certification that the applicant(s) informed affected employees of the application. The certification must indicate that the applicant(s):
  - A. Provided a copy of the recordkeeping variance application to their employees or their authorized employee representative(s); and
  - B. Posted a statement in a conspicuous place where the applicant(s) normally posts notices to employees which gives a summary of the recordkeeping variance application and specifies where employees may obtain a copy of the application for examination. (Note: The applicant may post the application in lieu of posting a summary of it).

## VI. Submittal of Variance Applications

Variance applications or petitions may be submitted to OSHA via mail (e.g., USPS, FedEx, or UPS) to OSHA's National Office to the attention of the OTPCA Director (contact information is found in Appendix C), or via email to [varianceprogram@dol.gov](mailto:varianceprogram@dol.gov). OSHA developed variance application forms which may be found in Appendix B of this Directive. Use of these forms is voluntary. However, OSHA will consider applications that do not contain the information requested in these forms to be deficient and may request additional information or deny applications based on insufficient supporting documentation. The Assistant Secretary makes the final decision on the applications or petitions.

## VII. Coverage Period of Granted Variances

OSHA publishes notices in the *Federal Register* announcing variance applications, interim orders and final decisions on variance applications, including the conditions, duration and scope of the approved variance or interim order. Granted variances remain in effect until modified, revoked, or they expire by their own terms. Interim orders remain in effect until modified, revoked, or until OSHA publishes its final decision on the variance application.

OSHA must approve the transfer of a granted variance to a successor company. Employers who wish to transfer a granted variance to a successor company must submit this request in writing to OSHA. OSHA will review the request and publish a *Federal Register* notice announcing the agency's decision on the request. The Assistant Secretary, at their discretion, may decline to entertain the application to apply the previously granted variance to a successor employer and may instead require the successor employer to submit an application for a new variance.

#### VIII. Public Notice of Variance Applications and Decisions on Variance Applications

OSHA publishes notices in the *Federal Register* to announce variance applications and final decisions on variance applications.<sup>1</sup> When the Assistant Secretary announces the agency's receipt of a variance application, the *Federal Register* notice may also announce the Assistant Secretary's preliminary determination on the application and, if requested, the grant of an interim order allowing the employer to begin implementing approved alternative method of compliance (engineering practices or administrative controls) until the Assistant Secretary announces the final decision on the variance application. Initial *Federal Register* notices announcing a variance application also request public comment on the application and provide notice to affected employers, employees, and relevant State agencies of their right to request a hearing on the application. OSHA addresses any comments the agency receives during the public comment period and, if applicable, the hearing, in the *Federal Register* notice announcing the final decision on the variance application.

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<sup>1</sup> If OSHA denies a variance application as defective under 29 CFR 1905.14(a), it does not publish a *Federal Register* notice announcing the application. See 29 CFR 1905.14(b) (requiring publication only for applications deemed adequate).

For recordkeeping variances, OSHA will offer the applicant's employees and their authorized representatives an opportunity to submit written data, views, and arguments about the variance application, but may forgo a *Federal Register* notice announcing the variance application and inviting public comment, at the agency's discretion. See 29 CFR 1904.38(b)(2).

## Chapter 3 – Processing of Variance Applications

This Chapter describes the administrative procedures associated with the review and evaluation of variance applications received by OSHA. 29 CFR 1905, Rules of Practice for Variances, Limitations, Variations, Tolerances and Exemptions provides the procedures for applications and decision-making on applications for variances under sections 6(b)(6)(A), 6(b)(6)(C), 6(d), and 16 of the OSH Act. 29 CFR 1904.38, Variances from the Recordkeeping Rule, governs applications for recordkeeping variances. The procedures below supplement the regulatory requirements in 29 CFR 1905 and 1904.38. OSHA’s process begins with receipt of the application and concludes with a recommendation to the Assistant Secretary, who makes the final decision on the application. The Assistant Secretary makes the determination on whether to grant an interim order while OSHA evaluates the application and whether to ultimately grant or deny a permanent variance, national defense variance, recordkeeping variance, temporary variance, or experimental variance.

### I. Supplemental Procedures for Accepting Variance Applications

#### A. Receipt of a Variance Application:

1. OTPCA determines Federal or State Plan coverage over the work activity associated with the variance request.
  - a. If OTPCA determines that the work activity will take place entirely in a State Plan, where the State Plan has coverage over the work activity outlined in the variance application, then:
    - i. OTPCA drafts a letter for the DTSEM Director’s signature, notifying the employer that the State Plan has coverage over the application and that the variance application would need to be filed with the State Plan. The letter further advises that if the applicant does not withdraw the application within 30 days, OSHA will deny it with prejudice (meaning the employer cannot reapply for a variance). OTPCA sends a copy of this letter to DCSP and the applicable OSHA Regional and Area Offices. DCSP will share this letter and the incoming application with the affected State Plan.
    - ii. In the communication with the State Plan informing it of the potential application, DCSP will encourage the State Plan to confer with OSHA before deciding to grant any related variance application it may receive from the same applicant, to ensure the State Plan’s enforcement of the relevant standard(s) remains “at least as effective” as Federal OSHA.

- b. If OTPCA determines that the work activity takes place in multiple States, including at least one State with a State Plan, in which the relevant State standard is identical to a Federal standard addressing the same hazard (referred to as a “Multi-State variance”), OTPCA continues its review of the Variance application.
2. OTPCA performs a limited review of the variance application for completeness (i.e., whether the application contains sufficient information to determine if the employer meets the requirements to be eligible to receive a variance). The limited review does not determine whether an employer’s submittal is adequate to demonstrate that the employer has met the requirements to receive a variance.
3. If OTPCA determines that the variance application is complete, OTPCA establishes a case file, prepares an acknowledgment letter for the DTSEM Director’s signature, and sends the employer(s) an acknowledgement letter confirming receipt of the application. This letter identifies a point of contact for inquiries and confirms receipt of the application. A copy of the acknowledgement letter is shared with the impacted Regional and Area Office(s), as well as DCSP when applications involve State Plans. DCSP will share a copy of the acknowledgement letter with the affected State Plan.

#### B. Review of the Variance Application

1. After sending the acknowledgement letter, OTPCA continues the review of the application to determine if it contains adequate information for OSHA to consider the application. If OTPCA determines that the variance application is missing information:
  - a) OTPCA Director sends a written request to the employer(s) to provide additional information to support the variance application within 30 days of the date of the request. Extensions of time to respond are made at the OTPCA Director’s discretion.
  - b) If the employer(s) does not respond by the 30-day deadline, or within any longer period specified by the OTPCA Director, or if the response is deemed inadequate by the OTPCA Director, OTPCA prepares a letter for the DTSEM Director’s signature informing the applicant that OSHA cannot process the application because it is defective, and that the variance application is denied without prejudice (meaning the employer can reapply for a variance). The letter also outlines the deficiencies in the variance application.

- c) If the employer(s) provides sufficient supporting material within the requested timeframe, OSHA continues the review of the variance application following the procedures outlined in Chapter 3, Section III of this Directive.
- C. If OTPCA determines that the variance application is seeking a Multi-State variance:
1. OTPCA sends the applicant an acknowledgement letter in accordance with Chapter 3, Section I.A.3 of this Directive.
  2. OTPCA notifies DCSP, DOC, and DEP as appropriate, and the impacted Regional and Area Office(s), of the Multi-State variance application and sends them a copy of the application and the acknowledgement letter.
  3. OTPCA continues the review of the application and coordinates with a Technical Review Team (TRT) to evaluate the application.

*More information on processing Multi-State variance applications can be found in Section IV of this Chapter.*

## II. Action on Variance Applications

### A. Defective Applications

1. If a variance application does not satisfy the requirements of 29 CFR 1905 or 1904.38, as applicable, OSHA shall deny the application. OTPCA may engage the TRT established under Section III.A. below at this stage of review.
2. If an application for a variance pursuant to Section 6(b)(6)(A) (Temporary Variances) or Section 6(d) (Permanent Variances) of the OSH Act does not include an alternative method of protecting employee safety or health in lieu of compliance with the applicable OSHA standard, OSHA shall deny the application.
3. For applications seeking a variance pursuant to Sections 6(d) of the OSH Act (Permanent Variances), if upon an initial review OTPCA determines that the variance application does not include a sufficient statement showing how the conditions, practices, means, methods of operations or processes used or proposed will provide employment and places of employment which are as safe and healthful as the applicable standard, as required by 29 CFR 1905.11(b)(4), OSHA shall deny the application as defective.
4. The notification letter denying the variance application shall include the grounds for the denial.

5. The applicant must post the notification letter of variance denial at the workplace, in a location that is visibly accessible to all employees.
6. The denial of the application as defective shall be without prejudice to the filing of another variance application.
7. Letters notifying employer(s) of defective variance applications shall be copied to the OSHA Regional and Area Office nearest the employer, as well as DCSP for applications involving employers in State Plans (for Multi-State variance applications). *DCSP will share the denial letters with the relevant State Plan.*
8. DTSEM in coordination with DEP, DOC as appropriate, as well as the applicable Regional Office shall request the local Area Office conduct a compliance inspection within 30 days of DTSEM's sending a denial letter to a variance applicant where no citation was previously involved. This inspection, to confirm ongoing compliance with the standard involved in the variance application, involves only the areas and work processes addressed by the application.
9. The OSHA Area Office provides DTSEM with a copy of the results of the compliance inspection, which DTSEM keeps in the variance application case file.

#### B. Adequate Applications

1. If OTPCA determines that the variance application is not defective or inadequate, OTPCA begins the formal review of the application, following the procedures outlined in Section III below.
2. Unless the application is withdrawn by the variance applicant, the review of a variance application deemed adequate typically involves two stages. First, OSHA publishes a *Federal Register* notice announcing the application. This *Federal Register* notice may also include a preliminary determination on the application and, in most cases where one is requested, OSHA's decision whether to grant an interim order.<sup>2</sup> The *Federal Register* notice invites public comment on the application and notifies affected employers, employees, and State agencies of their right to request a hearing. Second, OSHA publishes another *Federal Register* notice announcing the agency's final decision on the application.

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<sup>2</sup> OSHA may, in its discretion, publish separate *Federal Register* notices to announce receipt of the application and its decision on a request for an interim order.

### III. Supplemental Procedures for the Review of Variance Applications (Non-Multi State)

#### A. Establishment of Technical Review Team (TRT)

1. DTSEM notifies OSHA Directorates (DCSP, DEP, DOC, and DSG) and the impacted RA of the variance application and shares a copy of the application along with any supplemental materials provided by the employer(s).
2. DTSEM requests that OSHA Directorates (DCSP, DEP, DOC, and DSG) and RA identify a staff member to serve on a TRT to evaluate and provide feedback on the variance application.
3. OTPCA schedules a meeting with the TRT to discuss the variance application.

#### B. Review of Variance Application by TRT

1. The TRT meets to review the variance application and provide a technical evaluation on the application.
2. The TRT discusses the effectiveness of the alternative method of compliance the employer proposes in the variance application.
3. The TRT determines if additional information is needed to complete the review of the variance application:
  - i. If additional supporting material is needed, OTPCA contacts the employer(s) requesting that the additional information be provided within 30 days of the date of the request. Extensions of time to respond are made at the OTPCA Director's discretion.
  - ii. OTPCA shares copies of any additional information received and schedules a follow-up meeting with the TRT to discuss the updated application.
  - iii. If the requested information is not provided within 30 days as requested, or within any longer period specified by the OTPCA Director, or if the response is deemed inadequate by the OPCA Director (with input from the TRT), OPCA drafts a letter for the DTSEM Director signature making a final request to the applicant for the requested information. The letter further advises that if the information is not received within 30 days, or the response is deemed inadequate by the DTSEM Director, the variance application will be denied.

- iv. If the information is not received within 30 days of the date of the request, OTPCA drafts a letter for DTSEM Director signature, denying the variance application.
- v. DTSEM clears the denial letter through OSHA Directorates (DCSP, DEP, DOC, and DSG) and SOL as appropriate for sending the denial letter to the applicant.

### C. TRT Determination on the Variance Application

1. If the TRT proposes that DTSEM recommends to the Assistant Secretary to make a positive preliminary finding on the variance application, then:
  - i. TRT advises DTSEM whether the recommendation to the Assistant Secretary should include the grant of the interim order if requested, and
    - a. Identifies any conditions that OSHA should include in the interim order; and
    - b. Recommends whether a monitoring inspection to determine the effectiveness of the alternative method of compliance outlined in the variance application should be conducted in accordance with the procedures in Chapter 5 of this Directive.
  - ii. DTSEM drafts an initial *Federal Register* notice announcing the application and any preliminary determinations made by the Assistant Secretary. The *Federal Register* notice also requests comments on the variance application. If requested by the applicant and DTSEM recommends, this *Federal Register* notice also typically will announce the grant of an interim order.
  - iii. DTSEM clears the initial *Federal Register* notice through OSHA Directorates (DCSP, DEP, DOC, and DSG), SOL, and the impacted RA.
  - iv. DTSEM prepares a briefing for the Assistant Secretary and recommends whether to include a positive preliminary decision on the variance application and whether to grant an interim order, if requested.
  - v. Assistant Secretary makes preliminary decision on the variance application and OSHA publishes this decision in the *Federal Register*.
2. If the TRT proposes that DTSEM make a negative finding and deny the variance application, then:



- i. OTPCA drafts a letter for DTSEM Director signature, notifying the employer of OSHA's decision on the variance application, outlining the basis for OSHA's determination to deny the application.
- ii. The denial letter is cleared through OSHA Directorates (DCSP, DEP, DOC, and DSG) and SOL as appropriate, before being sent to the applicant(s) with a copy to the impacted Regional and Area Office(s).
- iii. The denial letter requires the employer(s) post a copy of the variance application denial letter where employees can see it.
- iv. The denial letter indicates whether OSHA denies the variance application with or without prejudice (meaning whether the employer can reapply for a variance).

#### IV. Supplemental Procedures for the Review of Multi-State Variance Applications

For purposes of this Instruction, a Multi-State variance application is a variance application involving more than one State, which could include at least one State with a State Plan, if the relevant State standard is identical to a Federal standard addressing the same hazard. If the Multi-State variance application involves a State Plan with non-identical standards, then the applicant shall apply to the State Plan directly to process the application. OSHA retains authority to grant or deny Multi-State variance applications, provided that the affected State Plan is provided a copy of the application and the opportunity to participate as a party in review of the application. The procedures below outline this process.

##### A. Establishment of Technical Review Team (TRT)

1. DTSEM notifies OSHA Directorates (DCSP, DEP, DOC and DSG), SOL, and the impacted Regional and Area Office(s) of the variance application, sharing a copy of the application and any supplemental materials related to the application.
2. DCSP shares a copy of the application and supplemental materials with the affected State Plan(s) and requests a State Plan representative from each impacted State Plan to participate on the TRT.
3. DTSEM requests that OSHA Directorates (DCSP, DOC and DEP as appropriate), SOL, and the impacted Regional Office identify a staff member to serve on the Technical Review Team to evaluate and provide feedback on the application.

##### B. TRT Review of Multi-State Variance Applications

1. The TRT meets to review and provide a technical evaluation of the variance application.
2. The TRT discusses the effectiveness of the alternative method of compliance the employer proposes in the variance application.
3. The TRT determines if additional information is needed to complete the review of the variance application.
  - i. If additional information is needed, OTPCA contacts the employer(s) requesting that the additional information be provided within 30 days. Extensions of time to respond are made at the OTPCA Director's discretion.
  - ii. OTPCA shares copies of additional information received with the TRT and schedules a follow-up meeting of the TRT to discuss the updated application.
  - iii. If the requested information is not provided within 30 days as requested, or within any longer period specified by the OTPCA Director, or if the response is deemed inadequate by the OTPCA Director, with input from the TRT, OTPCA drafts a letter for DTSEM Director's signature, with a final request to provide the requested information. The letter further advises that if the information is not received within 30 days, or the response is deemed inadequate by the DTSEM Director, the variance application will be denied.
  - iv. If the information is not received within 30 days, OTPCA drafts a letter for DTSEM Director's signature, denying the variance application.
  - v. DTSEM clears the denial letter through OSHA Directorates (DCSP, DEP, DOC, and DSG) and SOL as appropriate before sending the denial letter to the applicant.
  - vi. DCSP shares the denial letter with the affected State Plan(s).

C. TRT determination on Multi-State Variance Application

1. If the TRT proposes that DTSEM recommends that the Assistant Secretary make a positive preliminary finding on the Multi-State variance application, then:
  - i. The TRT advises DTSEM whether the recommendation to the Assistant Secretary should include the grant of the interim order if requested;
    - a. Identifies any conditions that OSHA shall include in a grant of an interim order; and

- b. Recommends whether a monitoring inspection to determine the effectiveness of the alternative method of compliance outlined in the variance application should be conducted in accordance with the procedures in Chapter 5 of this Directive after the Assistant Secretary grants an interim order.
    - ii. DTSEM drafts an initial *Federal Register* notice announcing the variance application, and in most cases, the grant of an interim order, if requested by the applicant and DTSEM recommends, and a request for public comment on the variance application.
    - iii. DTSEM clears the initial *Federal Register* notice through OSHA Directorates (DCSP, DEP, DOC, and DSG), SOL, and Regional Office.
    - iv. DTSEM prepares a briefing for the Assistant Secretary and makes a recommendation on whether to include a positive preliminary decision on the variance application, including whether to grant an interim order, if requested.
- 2. If the TRT proposes that the DTSEM make a negative finding and deny the Multi-State variance application, then:
  - i. OTPCA drafts a letter of denial to the employer for DTSEM Director signature, notifying the employer(s) of OSHA's decision on the variance application, outlining the basis for OSHA's determination to deny the application.
  - ii. DTSEM clears the denial letter through OSHA Directorates (DCSP, DEP, DOC, and DSG) and SOL as appropriate and sends the denial letter to the employer with a copy to the impacted Regional and Area Office(s). DCSP also provides a copy of the letter to State Plan(s) in cases of Multi-State variances including State Plans to allow the State Plan to comment on the decision to deny the variance application.
  - iii. The denial letter requires the employer(s) post a copy of the variance application denial letter where employees can see it.
  - iv. The denial letter indicates whether OSHA denies the variance application with or without prejudice (meaning whether the employer can reapply for a variance).

#### D. State Plan Approval of Multi-State Variance Applications

Before making a recommendation to the Assistant Secretary to grant a Multi-State variance involving a State Plan, DTSEM through DCSP:

1. Contacts each affected State Plan to obtain written certification documenting whether it will choose to recognize OSHA's grant of a variance within the State. The State Plan should provide the written certification to DCSP-OSP in a formal letter on State Plan letterhead within 30 days. DCSP will forward this certification to DTSEM.
2. If an impacted State Plan provides written certification that they will not honor the variance application impacting their State Plan, DTSEM will provide written notification to the variance applicant that the variance will not apply to work performed in the State Plan that declined to honor the OSHA-granted variance in their State.
  - i. DTSEM sends the applicant(s) a letter, requesting written certification documenting the applicant(s) understanding that the variance does not apply in the State with the State Plan, and any order granting a variance (interim order or permanent) would include a condition that the alternate work practice approved in the variance does not apply in the State with the State Plan that did not approve the variance. DTSEM will share this written certification with DCSP to share with the impacted State Plan.

## V. Variance Applications Involving Structural Housing/Temporary Labor Camps

OSHA's Variance Program provides consultation to DOL's Employment and Training Administration (ETA) in their review and processing of structural housing variance applications submitted under ETA regulations at [20 CFR 654, Subpart E](#), Housing for Farmworkers. These regulations apply to temporary agricultural housing completed or under construction prior to April 3, 1980, or under a signed contract for construction prior to March 4, 1980. Agricultural housing completed after these dates must comply with OSHA's temporary labor camps standard at 29 CFR 1910.142 or with the comparable State Plan regulation in states with OSHA-approved State Plans. OSHA shares enforcement authority with respect to 29 CFR 1910.142, as well as the field sanitation standard (29 CFR 1928.110), with DOL's Wage and Hour Division (WHD).<sup>3</sup> OSHA's variance program (or State Plan, where applicable) processes and reviews variance applications arising under these standards, in consultation with WHD.

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<sup>3</sup> The Secretary of Labor has delegated authority for enforcement of 29 CFR 1910.142, as well as OSHA's field sanitation standard, 29 CFR 1928.110, to WHD's Division of Immigrant, Farm Labor and Trade (IFLT) for any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), pursuant to the Secretary's Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health (see 8-2020 Order, 85 FR 58393). OSHA retains enforcement authority over temporary labor camps for egg, poultry, red meat production, post-harvesting processing of agricultural and horticultural commodities, and any non-agricultural temporary labor camps.

## Chapter 4 – Development of *Federal Register* Notices to Announce Variance Applications

This Chapter outlines the process of developing *Federal Register* notices to announce the receipt of variance applications and any preliminary decisions of the Assistant Secretary on the application.

The Variance Program regulations at 29 CFR 1905 require the publication of at least two *Federal Register* notices: one announcing the application and the second announcing the final decision on the application. Where an interim order has been requested, OSHA typically includes the agency's determination whether to grant the interim order in the initial *Federal Register* notice. The agency may also announce a preliminary decision on the application in the initial *Federal Register* notice. The initial *Federal Register* notice invites public comment on the application and notifies affected employers, employees, and relevant State agencies of their right to request a hearing on the variance application. In cases where an interim order is granted, the *Federal Register* notice permits the employer(s) to implement alternative method of compliance while OSHA continues its review of the application. The final *Federal Register* notice announces the Assistant Secretary's final decision on the application. The final *Federal Register* notice formally grants or denies the requested variance.

OTPCA prepares all *Federal Register* notices relating to variance applications. DTSEM coordinates the *Federal Register* notice's clearance through OSHA Directorates (DCSP, DEP, DOC and DSG), SOL, and the impacted Regional Office(s) before presenting the draft *Federal Register* notice to the Assistant Secretary for review and approval. For initial *Federal Register* notices, DTSEM makes a recommendation to the Assistant Secretary based on the recommendation of the Technical Review Team (TRT) and the concurrence of the OSHA Directorates (DCSP, DEP, DOC and DSG), SOL, and impacted Regional Office(s) that reviewed the application. The Assistant Secretary makes the final determination regarding any request for an interim order and may make other preliminary determinations on the application, and OSHA publishes this decision in the *Federal Register*.

### I. Supplemental Procedures for the Development of *Federal Register* Notices Announcing Variance Applications

#### A. Development of Initial *Federal Register* Notice

1. OTPCA drafts the initial *Federal Register* notice announcing receipt of the variance application, seeking public comment, and informing affecting employers, employees, and appropriate State authorities of the right to request a hearing on the application. The *Federal Register* notice may also include a preliminary determination on the application and, where requested, the grant of an interim order.
2. DTSEM reviews the initial *Federal Register* notice and initiates its clearance through OSHA Directorates (DCSP, DEP, DOC and DSG), SOL, and impacted Regional Office(s).

B. Clearance of Initial *Federal Register* Notice

1. DTSEM clears the *Federal Register* notice through OSHA Directorates (DCSP, DEP, DOC, and DSG), SOL, and impacted Regional Office(s) before presenting it to the Assistant Secretary for review and approval.
2. After clearance, DTSEM provides the Assistant Secretary with the draft *Federal Register* notice and briefing materials including a preliminary recommendation on whether the Assistant Secretary shall approve or deny the variance application.

C. Assistant Secretary Approval of the Initial *Federal Register* Notice and any Preliminary Decision on Variance Application

If the Assistant Secretary approves the *Federal Register* notice and grants an interim order, if applicable, then:

1. OSHA continues the review of the variance application.
2. OSHA publishes the *Federal Register* notice.
3. DTSEM notifies OSHA Directorates (DCSP, DEP, DOC, and DSG), SOL and impacted Regional Office(s) that Assistant Secretary has made a preliminary decision to grant the variance and granted an interim order, if applicable.
4. DTSEM updates the Variance Program webpage on the OSHA public website to reflect the new interim order.
5. DTSEM collects and reviews comments the agency receives during the public comment period in collaboration with the TRT.

## Chapter 5 – Monitoring Visits for Variance Applicants and Employers with Interim Orders, Experimental, Permanent, and Temporary Variances

This Chapter outlines the procedures associated with conducting monitoring visits to employer(s) that have received interim orders, experimental, permanent, or temporary variances.

DTSEM may, in collaboration with OSHA Directorates (DEP and DOC as appropriate) and the impacted Regional Office (as appropriate), request that the OSHA Area Office having jurisdiction over the employer site conduct monitoring visits:

- Before OSHA grants any experimental or temporary variances;
- After expiration of a temporary variance, or if an employer states that it is experiencing problems in meeting the scheduled deadlines of the temporary variance;
- Before making decision on variance requests involving flammable and combustible liquids, toxic and carcinogenic substances, explosives, electrical equipment and other variance requests as deemed necessary by OSHA;
- After OSHA receives notification that an employee objects to a grant of a variance application at their worksite;
- After an affected employee requests a hearing on the merits of a variance application; and
- Where OSHA determines that first-hand examination is necessary to obtain further information before making a decision whether to grant or deny a variance application.

Monitoring activities for OSHA-granted variances in States with State Plans will be performed by the State Plan.

Variance monitoring visits are a single-purpose, pre-announced inspection. The visit is conducted through collaboration with DTSEM and OSHA Directorates (DEP or DOC, as appropriate) and the Regional and Area Office(s) closest to the employer site(s). The visit is limited to gathering information concerning the variance application, interim order, experimental, permanent or temporary variance. The Area Office conducting the monitoring inspection shall follow citation procedures for any hazards related to the variance application found during the monitoring inspection in accordance with [CPL 02-00-164](#), OSHA Field Operations Manual (FOM), April 14, 2020, Chapter 3, Section VII, K, and FOM Chapter 4, Section I, A, 5. The employer, employees, and the Area Director of the OSHA Area Office with jurisdiction over the employer site will be informed if an imminent danger situation is found during the variance monitoring visit.



Variance monitoring visits are conducted to ensure the effectiveness of the alternative method of compliance outlined in the variance application and approved in the interim order, experimental, permanent, or temporary variance.

#### I. Variance Monitoring Visits of Employers with Interim Orders.

##### A. Scheduling of Monitoring Visit

1. DTSEM, in coordination with DEP, DOC as appropriate, and the Regional Administrator for the area(s) where the employer is located requests the OSHA Area Office with jurisdiction over the employer site(s) in Federal OSHA States to conduct a verification inspection within 30 days following the publication of a grant of interim order in the *Federal Register*.

##### B. Variance Monitoring Visit Conducted

1. The OSHA Area Office nearest the employer site(s) conducts a monitoring visit to evaluate effectiveness of alternative method of compliance approved in the interim order.

##### C. Results of Variance Monitoring Visit

1. The Area Office shares with DTSEM, DEP and DOC as appropriate, and the impacted Regional Office(s) any findings identified during the monitoring visit; DTSEM will share results with the Technical Review Team (TRT).
2. DTSEM, through DCSP, may inquire with the affected State Plan(s) about the results of State Plan monitoring visits.
3. If the monitoring visit finds that the employer is not in compliance with the conditions of the variance in a state under Federal OSHA jurisdiction, OSHA may issue a citation for violating the standard from which the variance was granted.
4. If the results of the variance monitoring visit demonstrate that the conditions in the interim order are not adequate to support a safe and healthful workplace, the TRT makes recommendations, where possible, on modifying the conditions to support sustaining the interim order.
  - a. The TRT provides OTPCA proposed modified conditions for the interim order.

- b. OTPCA, with input from the TRT, provides a recommendation to the DTSEM Director that OSHA update the conditions the Assistant Secretary granted in the interim order.
  - c. With DTSEM Director approval, OTPCA follows the process outlined in Chapter 7 of this Directive to draft a *Federal Register* notice announcing OSHA's intent to modify the interim order.
- 5. If the results of the Federal OSHA monitoring visit or any State Plan monitoring visit demonstrate that the employer is not adhering to the conditions of the interim order:
  - a. The TRT reviews the findings from the monitoring visit and determines that problems found during the monitoring visit, or a citation(s) issued related to work activities outlined in variance application, demonstrate noncompliance with the conditions of the interim order.
  - b. TRT recommends to OTPCA that OSHA revoke the interim order and deny the variance.
  - c. OTPCA recommends to the DTSEM Director that OSHA revoke the interim order and deny the variance. With DTSEM Director approval, OTPCA follows the procedures outlined in Chapter 7 of this Directive to draft a *Federal Register* notice announcing OSHA's intent to revoke the interim order and deny the variance.
  - d. DTSEM, through DCSP, communicates these issues of inadequacy in writing to all State Plans who have provided written certification honoring the variance. DCSP ensures that the State Plans extend the revocation of the variance to the State.

## II. Monitoring Visits of Employers with Experimental or Temporary Variances Granted by OSHA.

### A. Scheduling of Monitoring Visit

- 1. DTSEM, in coordination with DEP, DOC as appropriate, and the Regional Administrator for the area where the employer site(s) is located, requests that OSHA Area Office with jurisdiction over the employer site in Federal OSHA States to conduct a verification inspection within 30 days of the publication of a grant of an experimental or temporary variance the *Federal Register*.

## B. Monitoring Visit Conducted

1. The OSHA Area Office nearest the employer site(s) conducts a monitoring visit to evaluate effectiveness of the alternative method of compliance approved in the experimental or temporary variance.

## C. Results of Monitoring Visit

1. The Area Office shares with DTSEM, DCSP, DEP and DOC as appropriate, and the impacted Regional Office(s) any findings identified during the monitoring visit; DTSEM shares results with the Technical Review Team (TRT) that reviewed the experimental or temporary variance application.
2. If no issues are found during the monitoring visit, the experimental or temporary variance remains in place.
3. If the results of the variance monitoring visit demonstrate that (1) the conditions of the experimental variance are not adequate to support a safe and healthful workplace, or (2) that the conditions of the temporary variance fail to incorporate available steps for protecting employees, the TRT makes a recommendation on additional conditions to support sustaining the variance.
  - a. The TRT provides OTPCA proposed modified conditions for the experimental or temporary variance.
  - b. OTPCA, with input from the TRT, provides a recommendation to the DTSEM Director that OSHA update the conditions the Assistant Secretary granted in the experimental or temporary variance, and notifies the Secretary of Health and Human Services as applicable.
  - c. With DTSEM Director approval, OTPCA follows the procedures outlined in Chapter 7 of this Directive to draft a *Federal Register* notice announcing OSHA's proposal to *modify* an experimental or temporary variance.
4. If the findings of the Federal OSHA monitoring visit result in a citation issued involving the alternative method of compliance outlined in the experimental or temporary variance, then:
  - a. The TRT reviews the findings from the monitoring visit, including any citation(s) issued, to determine if the findings or citation(s) demonstrate noncompliance with the conditions of the experimental or temporary variance.

- b. If the TRT finds noncompliance with the conditions of the experimental or temporary variance, the TRT provides a recommendation to OTPCA that OSHA revoke the experimental or temporary variance.
- c. OTPCA makes a recommendation to the DTSEM Director to revoke the experimental or temporary variance.
- d. With DTSEM Director's approval, OTPCA follows the procedures outlined in Chapter 7 of this Directive to revoke the experimental or temporary variance.

### III. Monitoring Visits of Employers After Temporary Variance Expiration.

#### A. Scheduling of Monitoring Visit

- 1. DTSEM, in coordination with DEP and DOC as appropriate, and Regional Administrator of the area where the employer site is located, requests the local Area Office to conduct a verification inspection within 30 days following the expiration of Temporary Variance.

#### B. Conducting Monitoring Visit

- 1. Done in accordance with procedures outlined in Section I of this Chapter.

#### C. Results of Monitoring Visit

- 1. The Area Office shares with DTSEM, DEP and DOC as appropriate, and the impacted Regional Office(s) any findings identified during the monitoring visit.
- 2. DTSEM, through OTPCA shares results of monitoring visit with TRT.
- 3. If citation(s) are issued to the employer(s) during monitoring visit, employer(s) works with OSHA Area Office with jurisdiction over the employer site to resolve the citation.

## Chapter 6 - Development of *Federal Register* Notices to Announce the Final Decision on Variance Applications

This Chapter outlines the process of developing *Federal Register* notices to announce the Assistant Secretary's final decision to grant, deny, or modify a variance or interim order.

As outlined in Chapter 3 of this Instruction, the Variance Program regulations at 29 CFR 1905 require the publishing of at least two *Federal Register* notices before OSHA grants a permanent, temporary, experimental, or national security variance: one announcing the variance application and a second announcing the Assistant Secretary's final decision on the variance application.<sup>4</sup> For variance modifications, OSHA also publishes two *Federal Register* notices: one announcing the proposal to modify the variance or interim order and a second announcing the Assistant Secretary's final decision whether to modify the variance or interim order.

OTPCA develops the *Federal Register* notice announcing OSHA's final decision on variance applications or variance modifications. DTSEM coordinates the *Federal Register* notices' clearance through OSHA Directorates (DCSP, DEP, DOC and DSG), SOL, and impacted Regional Office(s) before presenting the draft *Federal Register* notice to the Assistant Secretary for review and approval. For final *Federal Register* notices, DTSEM makes a final determination based on any comments received during the public comment period, any feedback received from monitoring visits, and the concurrence of the OSHA Directorates (DCSP, DEP, DOC and DSG), SOL, and the impacted Regional Office(s) that reviewed the application. The Assistant Secretary makes the final decision to grant, deny or modify a variance application or interim order, and OSHA publishes this decision in the *Federal Register*.

- I. Supplemental Procedures for the Development of *Federal Register* Notice Announcing the Final Decision on a Variance Application
  - A. Development of the Final *Federal Register* Notice
    1. OTPCA drafts the final *Federal Register* notice announcing the grant, denial, or modification of a variance or interim order.
  - B. Clearance of the Final *Federal Register* Notice
    1. DTSEM clears the final *Federal Register* notice through OSHA Directorates (DCSP, DEP, DOC as appropriate, and DSG), SOL, and impacted Regional Office. For Multi-State variance applications involving State Plans, DTSEM, in collaboration

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<sup>4</sup> In the case of applications for recordkeeping variances, OSHA will offer the applicant's employees and their authorized representatives an opportunity to submit written data, views, and arguments about the variance application, but may forgo a *Federal Register* notice announcing the variance application and inviting public comment, at the agency's discretion. See 29 CFR 1904.38(b)(2).

with DCSP will share the draft *Federal Register* notice with the affected State Plan(s) before publication.

2. After clearance through OSHA Directorates (DCSP, DEP, DOC and DSG as appropriate), SOL, and Regional Office, DTSEM provides a briefing to the Assistant Secretary on the variance application and recommends that the Assistant Secretary approve, deny or modify the requested variance, interim order or permanent variance.

#### C. Assistant Secretary's Final Decision on the Variance Application

1. The Assistant Secretary makes the final decision on the variance application.
2. DTSEM notifies the impacted Regional and Area Office of the Assistant Secretary's final decision to grant, deny, or modify the variance application or interim order.

#### D. *Federal Register* Notice Publication

1. OSHA publishes a Final *Federal Register* notice announcing the final decision to grant, deny, or modify the variance or interim order.
2. DTSEM notifies DCSP; DCSP shares the *Federal Register* notice with States with State Plans.
3. DTSEM updates the Variance Program web page to reflect the new permanent, experimental, temporary, or national defense variance or interim order or to indicate the variance is denied. In cases of modifications, OSHA updates the web page with the new conditions of the modified permanent, experimental, temporary, or national defense variance or interim order.
4. For granted or modified variances, OTPCA collects annual reports from each employer with a granted variance in accordance with reporting requirements outlined in the order granting the variance.

## Chapter 7 – Modification/Revocation of Interim Orders or OSHA Granted Variances

This Chapter outlines the process of modifying or revoking interim orders or variances which OSHA granted. Interim orders or variances may be modified by written request of the affected employer or an affected employee, or by the Assistant Secretary on their own motion. Interim orders or variances may be revoked when OSHA determines the variance is no longer necessary because the work process subject to the variance has ceased or when the affected employer does not adhere to the conditions included in the order granting the interim order or variance.

Certain permanent variances are project-specific until the end of a particular project (e.g. tunneling construction projects). With these projects, the permanent variance ends when the project is completed. When an employer completes work related to a project-specific variance before a final determination is made on the variance application, the employer(s) shall notify OSHA that the project is complete. Upon such notification, OSHA will revoke any previously granted interim order.

Other permanent variances are for long-term work activities. If the employer does not comply with the condition of an interim order or permanent variance, or ceases operations, the variance must be revoked. OSHA publishes a *Federal Register* notice to inform the public of the agency's intent to terminate the previously granted interim order or permanent variance.

- I. Supplemental Procedures for the Development of *Federal Register* Notices Announcing OSHA's Intent to Modify an Interim Order for Granted Variance.
  - A. OSHA's determination to modify an interim order or granted variance
    1. OSHA determines that a modification to the conditions is necessary to support sustaining the interim order or granted variance.
      - a. Technical Review Team (TRT) makes a recommendation to OTPCA after reviewing findings from a monitoring visit or other information demonstrating that the existing conditions of the interim order or granted variance are not adequate to protect employees or otherwise do not satisfy the requirements of the applicable variance (e.g., additional measures are available to protect employees under a temporary variance).
      - b. For Multi-State variance applications involving State Plan(s), the TRT would include a State Plan representative. DTSEM through DCSP will contact the impacted State Plan(s).

- c. OTPCA makes a recommendation to DTSEM Director to begin the process of modifying the interim order or granted variance.
2. Upon request of employer or affected employee.
- a. If OSHA receives a written request from an affected employer or affected employee that the TRT determines includes the following:
    - i. The name and address of the applicant;
    - ii. A description of the relief which is sought;
    - iii. A statement setting forth the particularity of the grounds for relief;
    - iv. If the applicant is an employer, a certification that the applicant has informed affected employees of the application by:
      - a) Giving a copy of the application to the employees authorized representative;
      - b) Posting at the place or places of where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and
      - c) Other appropriate means.
    - v. If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and
    - vi. Any request for a hearing.
- B. Development of a *Federal Register* notice to announce the intent to modify an interim order or variance
- 1. Upon approval of the DTSEM Director, OTPCA develops a *Federal Register* notice announcing OSHA's intent to modify the interim order or variance, affording interested persons an opportunity to submit written data, views or arguments regarding the proposal to update the interim order or permanent variance and



informing affected employees of their right to request a hearing on the application.

2. DTSEM clears the *Federal Register* notice through OSHA Directorates (DCSP, DEP, DOC and DSG), the Regional Office and impacted State Plan(s) for Multi-State variances and SOL before making a recommendation to the Assistant Secretary to modify the previously granted interim order or granted variance.
3. DTSEM prepares a briefing for the Assistant Secretary recommending that the interim order or granted variance be modified.
4. Upon approval by the Assistant Secretary, OSHA publishes the *Federal Register* notice.
5. OTPCA drafts a letter for the DTSEM Director's signature, informing the employer(s) of the *Federal Register* notice announcing OSHA intent to modify the interim order or variance. DTSEM clears the letter through OSHA Directorates (DCSP, DEP, DOC as appropriate and DSG), the impacted Regional Office and SOL and sends the letter to the variance applicant via electronic and returned receipt mail with a copy to the impacted Regional and Area Office(s).
6. DCSP shares the interim order or variance modification letter with the State Plan(s) for interim orders and variances granted to employers within State Plans as part of a Multi-State variance application.
7. After the *Federal Register* notice announcing the intent to modify the interim order or variance is published, DTSEM shares the *Federal Register* notice with OSHA Directorates (DCSP, DEP, DOC and DSG) and the impacted Regional Office. DCSP shares the *Federal Register* notice with any affected State Plans.
8. DTSEM updates the Variance Program webpage on the OSHA public website to reflect the *Federal Register* notice proposing to modify the interim order or variance.
9. After the public comment period and the hearing, if requested, DTSEM reviews any comments received and prepares a final *Federal Register* notice addressing any comments and announcing the final decision to modify the interim order or granted variance, following the procedures in Chapter 6 of this Directive.

## II. Supplemental Procedures for the Development of *Federal Register* Notices Announcing OSHA's Intent to Terminate or Revoke an Interim Order or Granted Variance

### A. OSHA's determination that an interim order or granted variance be revoked.

1. If OTPCA determines that an employer is not complying with the conditions of the interim order or granted variance:
  - a. Technical Review Team (TRT) recommends to OTPCA, after reviewing the findings from a monitoring visit or other information demonstrating noncompliance with conditions of the interim order or granted variance, that OSHA revoke the interim order or granted variance.
  - b. OTPCA makes a recommendation to the DTSEM Director to revoke the interim order or granted variance.
  - c. OTPCA drafts a letter for the DTSEM Director's signature informing the employer that the conditions of the interim order or permanent variance are not being met and informing them of OSHA's intent to initiate the process to revoke the interim order or granted variance. The letter requests that the employer provide evidence of their capability to meet the conditions of the interim order or granted variance within 30 days. Extensions of time to respond may be granted at the discretion of the OTPCA Director.
  - d. DTSEM clears the letter to the employer through OSHA Directorates (DCSP, DEP, DOC and DSG as appropriate) and SOL and sends it to the employer with a copy to the impacted Regional and Area Office(s).
  - e. The letter is sent to the employer via electronic and return-receipt mail, with a copy to the impacted Regional and Area Office(s). For Multi-State variances involving a State Plan, OTPCA provides the letter to DCSP, which shares it with the affected State Plan(s).
  - f. If the employer submits a response within 30 days, and that response is acceptable to DTSEM (after vetting through the TRT and SOL) and demonstrates that the employer has come into compliance with the conditions of the interim order or variance, OTPCA would not necessarily proceed with revocation of the interim order or granted variance. OTPCA would, however, request written acknowledgment from the employer that they will continue to adhere to the conditions of the interim order.

- g. If the employer does not respond within 30 days, or if the response is deemed inadequate by the OTPCA Director, with input from the Technical Review Team:
  - i. OTPCA drafts a letter for the DTSEM Director's signature, requesting a response (in the case of no response) or additional information (in the case of an inadequate response) before the agency takes action to revoke the interim order or permanent variance. The letter requests a response from the employer within 30 days.
  - ii. DTSEM clears the letter through OSHA Directorates (DCSP, DEP, DOC, and DSG as appropriate) and SOL.
  - iii. Upon signature, the letter is sent to the employer via electronic and return-receipt mail, with a copy to the impacted Regional and Area Office(s).
  - iv. Extensions of time to respond are made at the DTSEM Director's discretion.
- h. If the employer does not respond to the second information request within 30 days, or if the response is deemed inadequate by the DTSEM Director, with input from the TRT:
  - i. OTPCA drafts a *Federal Register* notice announcing OSHA's intent to revoke the interim order or variance.
  - ii. DTSEM clears the *Federal Register* notice through OSHA Directorates (DCSP, DEP, DOC, and DSG), SOL, and the impacted Regional Office and sends it to the Assistant Secretary for approval and signature.
  - iii. DTSEM prepares a briefing for the Assistant Secretary recommending that the interim order or variance be revoked.
  - iv. Upon approval by the Assistant Secretary, OSHA publishes a *Federal Register* notice announcing the Assistant Secretary's intent to revoke the interim order or permanent variance.
  - v. OTPCA drafts a letter for the DTSEM Director's signature, informing the employer(s) of the *Federal Register* notice announcing OSHA's intent to revoke the interim order or permanent variance. DTSEM clears the letter through OSHA Directorates (DCSP, DEP, DOC as appropriate and DSG), the impacted Regional Office and SOL and sends the letter to the variance applicant via electronic and returned receipt mail with a copy to the impacted Regional and Area Office(s).

- vi. After the public comment period and the hearing, if requested, DTSEM reviews any comments received and prepares a final *Federal Register* notice addressing any comments and announcing the final decision to revoke the interim order or permanent variance, following the procedures in Chapter 6 of this Directive.
  - vii. OTPCA updates the Variance website to include the revoked interim order and/or variance in the listing of Denied or Withdrawn Variances.
2. Employer(s) informs OTPCA that the interim order or granted variance is no longer necessary:
- a. OSHA must obtain from the employer written notification that the interim order or permanent variance is no longer necessary, including an attestation that any alternative method of compliance approved in the interim order or granted variance will no longer be utilized; or
  - b. The employer provides written notification that the work activity identified in the interim order or permanence variance is complete. For experimental variances, the employer would provide written notification that the experiment has concluded.
  - c. DTSEM sends a letter to the employer acknowledging receipt of the notification that work associated with the permanent variance is complete, and OTPCA develops a *Federal Register* notice to revoke the permanent variance following the procedures in Chapter 6 of this Directive.

## Chapter 8 – Variance Application-Related Hearings

This Chapter outlines the procedures related to requesting and conducting hearings for variance-related applications.

Sections 6(b)(6)(A), 6(d), and 16 of the OSH Act and 29 CFR 1905 contain the specific statutory and regulatory requirements (rules of practice) for requesting, announcing, conducting, rendering decisions on, and appealing the outcome of hearings related to temporary, permanent, and national defense variance applications.

Any affected employer, employee, or appropriate State agency having jurisdiction over employment or places of employment covered in an application has a right to request a hearing on the variance application or on applications for modification of a variance.

### I. Supplemental Procedures for Conducting Hearings on Variance Applications

#### A. Hearing Requests for Variance Applications

- i. Can be made when an employer submits a variance application, as well as after OSHA publishes a *Federal Register* notice announcing the variance application and requesting comments;
- ii. Must be submitted in writing to the Assistant Secretary. These requests can be submitted by the affected employers when submitting variance applications or by affected employees or State agencies after being notified of a variance application that was sent to OSHA for evaluation and approval. The *Federal Register* notice announcing the application will provide contact information that can be used to submit hearing requests;
- iii. Must be submitted prior to the deadline specified in the *Federal Register* notice announcing the variance application;
- iv. Must include a statement of how the employer or employee would be affected by the relief applied for under the variance application;
- v. Must include a specification of any statement or representation in the application which is challenged or denied, and a detailed summary of the evidence in support of each challenge or denial; and
- vi. Must include information on what the requesting party would seek to show on the subject(s) or issue(s) involved including any views or arguments on any issue of fact or law presented in the variance application.

## B. Notice of Hearings on Variance Applications

- i. After OSHA receives a request for a hearing which is timely filed, and if the variance application is not denied as defective pursuant to 29 CFR 1905.14(a), OTPCA drafts a *Federal Register* notice announcing the hearing request on the variance application.
- ii. DTSEM clears this *Federal Register* notice through the OSHA Directorates (DCSP, DEP, DOC and DSG), SOL, and Regional Office and sends the recommendation to the Assistant Secretary to grant or deny the hearing request.
- iii. If the Assistant Secretary approves the hearing request, then OSHA publishes a *Federal Register* notice announcing the hearing on the application.
- iv. The *Federal Register* notice announcing the hearing on the application will include the following:
  1. A summary of the variance application;
  2. The time, place, and nature of the hearing;
  3. The legal authority under which the hearing is to be held;
  4. A specification of issues of fact and law; and
  5. A designation of a hearing examiner, appointed from among the Department of Labor's administrative law judges, who will preside over the hearing. Note – OSHA sends a copy of the hearing notice to the designated hearing examiner, along with the original variance application and written requests for a hearing.
- v. OSHA is required to service the notice of a hearing on “any party” including the applicant requesting relief, and any impacted employee impacted by the variance application.

Service of the hearing notice must be accomplished by personal delivery of, or by mailing, a copy of the hearing notice to the last known address of the party. See 29 CFR 1905.21.

## C. Conduct of Hearings

- i. All hearings on variance applications are conducted by Hearing Examiners appointed by the Assistant Secretary. Hearings are governed by OSHA's regulations at 29 CFR 1905 Subpart C.

## Chapter 9 - Federal Agencies and Federal Agency Contractors

This Chapter summarizes the relationship between the Variance Program, other federal agencies, federal agency contractors, and DOL agencies that grant structural housing variances.

### I. Federal Agencies

A federal agency may be granted an alternate standard upon a showing that the alternate standard will provide equivalent or greater protection for affected agency employees than compliance with the applicable OSHA standard. An agency can apply for an alternate and/or supplementary standard using application procedures found at [29 CFR 1960.17](#), Alternate Standards. OSHA's Office of Federal Agency Programs (FAP) within the Directorate of Enforcement Programs, reviews and processes agencies' requests for alternate standards. Alternate standards are agency-specific and only apply to federal civilian employees.

### II. Federal Agency Contractors

Like other private sector employers, federal agency contractors must apply for a variance under 29 CFR part 1905. OSHA's variance program processes and evaluates variance applications from federal agency contractors under the applicable rules for the type of variance sought. Federal agency contractors cannot use federal agency alternate standards.



## Appendix A Definitions

This appendix contains definitions of terms used in the instruction, including the appendices.

- a. Affected Employee – an employee who would be affected by the grant or denial of a variance, limitation, variation, tolerance, or exemption, or any one of the worker’s authorized representatives, such as the worker’s collective bargaining agent.
- b. Alternative Method of Compliance – alternative work activity proposed by the employer in lieu of compliance with the OSHA standard(s) impacting the work activity outlined in the variance application.
- c. Applicant – an employer or class of employers who apply for a variance from an OSHA standard, or a section or provision of such a standard.
- d. Assistant Secretary – the Assistant Secretary of Labor for Occupational Safety and Health.
- e. Case File – consists of all relevant information, sensitive and non-sensitive, pertaining to a variance application. The case file includes or incorporates the original application, amendments to the application, correspondence, the *Federal Register* notices that relate to the application, and other pertinent documentation.
- f. Class of Employers – a group of employers having closely similar conditions at their workplaces who unite to simultaneously file an application for a variance by proposing the same alternative means of compliance for the same occupational safety and health standard or standards.
- g. Defective Application – an application that does not conform to the applicable sections of 29 CFR 1905.10 (temporary variances), 1905.11 (permanent variances), 1905.13 (national defense variances), 29 U.S.C. 655(b)(6)(C) (experimental variances (Section 6(b)(6)(C) of the OSH Act)), or 29 CFR 1910.38 (recordkeeping variances). The Assistant Secretary may deny such an application.
- h. Docket – the documentation made available to the public relating to a specific variance application or related applications, and accessible online at <https://www.regulations.gov> and at the OSHA Docket Office, located in OSHA’s Technical Data Center within DTSEM.

- i. Evaluation – a determination of the extent to which an application for variance meets the specified statutory, regulatory, administrative, and technical requirements for variances.
- j. Hearing – a formal legal proceeding before a hearing examiner in which parties present evidence in response to a notice of the variance application in the *Federal Register*. The specific parties that may request a hearing include workers and employers affected by the variance application and State agencies having coverage over the employment or places of employment covered by the variance application through a State Plan.
- k. Hearing Examiner – administrative law judge appointed by the Assistant Secretary to preside over hearings related to variance applications.
- l. Interim Order – a notification, prior to the grant of a permanent variance, providing relief for an applicant from the OSHA standard(s) from which the applicant requested the variance. OSHA bases interim orders on a preliminary determination it makes to grant the variance. To assure a safe and healthful workplace for affected workers, OSHA may, when issuing an interim order, impose additional conditions to the conditions the applicant proposes in the alternative means of compliance specified in the application.
- m. Order – notice published in the *Federal Register* establishing the conditions (requirements) of the granted variance or interim conditions (in the case of an interim order) with which the applicant must comply to avail themselves of the variance.
- n. OSH Act – Occupational Safety and Health Act of 1970.
- o. OSP – Office of State Programs, DCSP
- p. Party – a person admitted to participate in a hearing conducted in relation to a variance application. An applicant for relief and any affected employee who are entitled to be named parties.
- q. Recordkeeping Variance – a variance from one or more provisions of OSHA’s Recordkeeping rule, 29 CFR 1904.
- r. Secretary – the Secretary of Labor.
- s. Supporting Documents – includes documents submitted with a variance application such as photos, blueprints, drawings, models, reports, data and other information and

evidence necessary to describe the proposed alternative, and to demonstrate the level of employee protection it provides.

- t. Technical Review Team (TRT) – a group of appropriately qualified occupational safety and health subject-matter expert personnel which respective offices designate to assist OTPCA in the technical review of variance applications. The TRT evaluates the effectiveness of the alternate means of worker protection the applicant proposes. The goal of the TRT is to determine if the proposed alternative provides the applicant's workers with safety and health protection that is equal to, or greater than, the protection afforded to them by compliance with the standard(s) from which the applicant is seeking the variance. Subject-matter experts may come from a variety of sources including organizations such as: national office directorates, OSHA Regional Offices and Area Offices, OSHA approved State Plans, the Office of the Solicitor, other agencies from within the Department of Labor, and other federal agencies.
  
- u. Variance - permission granted to an employer to deviate from the requirements of an OSHA standard, rule or other requirement under specified conditions. See the discussion of the types of variances in Section XI.A of this instruction. All variances have only future effect.
  
- v. Variance Monitoring Inspection – a follow-up inspection of an applicant's facility to ensure compliance with the conditions specified by a variance order or interim order.

## Appendix B Variance Program Forms

# EXPERIMENTAL VARIANCE APPLICATION <sup>1</sup>



OMB No. 1218-0265 / Expires: 3/31/2025

**Instructions:** Please review the supplemental information and instructions [Supplemental Information and Completion Instructions](#) prior to completing the variance application. For questions about this form or the variance process, contact OSHA at [VarianceProgram@dol.gov](mailto:VarianceProgram@dol.gov)

## Section I - Applicant Information

### 1. Applicant Company

Company Name: \_\_\_\_\_  
Principal Address:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

### 2. Contact Information

#### a. Authorized Representative:

Company Representative's Name: \_\_\_\_\_  
Title/Position: \_\_\_\_\_  
Address (if different from the company's principal address):  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

#### b. Primary point of contact with the company (if different from the authorized representative):

Point of Contact Name: \_\_\_\_\_  
Title/Position: \_\_\_\_\_  
Address (if different from the company's principal address):  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

### 3. Multiple Site Addresses

#### a. Site Name:

Site address including:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

#### b. Site Name:

Site address including:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

#### c. Site Name:

Site address including:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

<sup>1</sup>Use of this form is voluntary.

## Section II - Support Information

4. Provide a detailed list of the standard(s) from which the applicant is requesting the experimental variance.

5. Explain why the proposed experimental variance is necessary, and provide a description of the risks and hazards associated with the experiment, and how the applicant will provide an equivalent level of protection to workers during the experiment.

6. Provide a detailed explanation of how the experimental variance will demonstrate or validate new and improved techniques to safeguard the health and safety of workers.

7. Describe in detail the plan of the proposed experiment, which must include:

a. The names and qualifications of the supervisor(s) of the experiment, and the supervisor's(s') staff involved in the experiment; and

b. The proposed steps and duration of the experiment (in days), employee work time (in hours), and hours of machine operation (if applicable).

8. Provide a detailed statement describing similar experimentation or related research conducted by the applicant or another party (if known). The statement should include, if available, data, summaries, reports, and evaluations (or a reference thereto) of such experimentation or research.

9. Provide a statement that demonstrates that the applicant has sufficient technological, economic, and labor resources to perform the experiment properly, with proper controls.

10. Provide a signed letter or an official document indicating approval of the experiment by the Secretary of the U.S. Department of Health and Human Services (if available).

11. Prepare and attach a copy of a written statement(s) signed by each employee who agrees to participate in the proposed experiment that he/she does so knowingly, willingly, and voluntarily.

12. By the signature entered below, the applicant certifies that it informed the employees volunteering to participate in the experiment of the plan of the proposed experiment, its attendant risks, their right to terminate participation in the experiment, and their right to petition the Assistant Secretary for a hearing, by placing one or more check marks next to the item describing the means used.

- \_\_\_\_\_ a. Giving a copy of the experimental variance application to the authorized employee representative(s) and providing instructions concerning the employees' right to petition the Assistant Secretary for a hearing.
- \_\_\_\_\_ b. Alternatively, posting a statement giving a summary of the application and specifying where its employees may examine a copy of the experimental variance application (at the place(s) where the applicant normally posts notices to employees), and providing instructions concerning the employees' right to petition the Assistant Secretary for a hearing; or, instead of a summary, posting of the application itself; or
- \_\_\_\_\_ c. If the applicant used an alternate means (other than the means specified in statements (a) and/or (b) above) to inform its employees of the application and their right to petition the Assistant Secretary for a hearing, then attach a detailed description of the alternate means.

13. If any worksite for which the applicant is requesting this experimental variance is in a state with an OSHA-approved occupational safety and health program ("State Plan state"<sup>2</sup>), confirm that the variance application involves a state standard(s), or portion thereof, that is identical to the OSHA standard(s),<sup>3</sup> and provide the following information for each such standard:

- a. A side-by-side comparison of the OSHA standard(s) from which the applicant is requesting the experimental variance with the state standard(s) that is/are identical to the OSHA standard;
- b. By the signature entered below, the applicant certifies that it has not filed an application for an experimental variance on the same material facts for the same place(s) of employment with the State plan state/states in question; and
- c. A statement identifying any pending citations issued to the applicant by a State Plan state for violating the state standard(s) that is/are the subject of this variance application.

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<sup>2</sup>The following are states and territories with approved state plans: AK, AZ, CA, CT,\* HI, IA, IL,\* IN, KY, ME\*, MA\*, MD, MI, MN, NC, NJ,\* NM, NV, NY,\* OR, PR, SC, TN, UT, VA, VT, VI,\* WA, and WY. \*Plans cover public-sector employees only; the remaining states cover both public-sector and private-sector employees.

<sup>3</sup>If the state standard(s) is/are not identical to the OSHA standard(s), the applicant must apply to the state for an experimental variance.

14. Provide a statement describing in detail any:

a. Past or pending citations, including identification and the disposition thereof, issued to the applicant by Federal OSHA or a State Plan state; and

b. Judicial and administrative proceedings to which the applicant is or was a party involving breaches of the Occupational Safety and Health Act of 1970, or violations of standards or regulations issued by Federal OSHA or a State Plan state.

15. The applicant certifies by the signature below that the information contained in the application is accurate and true to the best of the applicant's knowledge.

Signature of the authorized representative: \_\_\_\_\_

Print name: \_\_\_\_\_ Date: \_\_\_\_\_

**Paperwork Reduction Act Statement      OMB Control Number: 1218-0265**

According to the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 30 hours per response. This burden includes locating and assembling information required to complete the variance application, informing affected workers of the decision to seek a variance, completing the variance application, and assembling the application documents, but does not include hosting an OSHA site visit. The obligation to respond to this collection is voluntary. Information obtained from this form will be used to determine if a variance will be granted to the applicant. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Labor, OSHA, Office of Technical Programs and Coordination Activities, Room N-3653, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. OMB Control Number: 1218-0265.



## Supplemental Information and Instructions for Completing the **Experimental Variance Application Form**

Section 6(b)(6)(C) of the Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 651 *et seq.*) authorizes experimental variances from Occupational Safety and Health Administration (OSHA) standards. Sections A, B, C, and D below provide a brief summary of these requirements, detailed instructions for completing the application form, some common application deficiencies to avoid, and procedures and instructions for submitting an experimental variance application to OSHA.

### **A. Summary of Requirements for Obtaining an Experimental Variance**

An employer (or class or group of employers<sup>4</sup>) may request an experimental variance for a specific workplace(s). An experimental variance authorizes employer(s) to demonstrate or validate new or improved safety and health techniques when they can prove that their proposed experimental methods, conditions, practices, operations, or processes provide workplaces that are at least as safe and healthful as the workplaces provided by the OSHA standards from which they are seeking the experimental variance. In the application, the employer must describe in detail the proposed experimental design, and how performing the experiment will demonstrate that workers will receive safety and health protection that is at least equal to the protection afforded by compliance with the standard(s). In addition, the employer must:

1. Obtain a written statement signed by each worker who agrees to participate in the proposed experiment that he/she does so knowingly, willingly, and voluntarily.
2. Provide certification that the employer informed the volunteer workers of the plan of the proposed experiment, its attendant risk, and the right to terminate participation in the experiment.

### **B. Instructions for Completing the Experimental Variance Application Form**

#### **Section I: Application Information**

1. and 2. Self-explanatory.
0. Provide the address(es) of all the location(s) of employment where the employer would implement the experimental variance (if different from the company's principal address).

#### **Section II: Support Information**

1. through 9. Self-explanatory.
10. If the Secretary of the U.S. Department of Health and Human Services approved the proposed experiment, attach a copy of a signed letter or an official document attesting to such approval and, when appropriate, certification from the Secretary that it is necessary for the applicant to deviate from compliance with the standard(s) that are the subject of this variance application, to conduct the experiment.
11. through 14. Self-explanatory.
15. This form is to be signed by the applicant's authorized representative to certify that the information contained in the application is accurate and true to the best of the applicant's knowledge. Also, enter the printed name of the applicant's authorized representative and the date the authorized representative signed the application.

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<sup>4</sup>A class or group of employers in the same industry (such as members of a trade alliance or association) may apply jointly for a variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

### C. Reviewing the Experimental Variance Application

Carefully review the variance application, and ensure that:

1. The application is complete and contains detailed descriptions for each item in the form, including the name and signature of the authorized representative;
2. The variance is not a request for an exemption or waiver from the requirements of a standard;
3. The applicant is not seeking the variance from a "definition" or from a "performance" standard (i.e., a standard that does not describe a specific action for meeting the requirements of the standard); and
4. If the application involves location(s) in State Plan states, that it also includes a state or states under Federal OSHA authority.<sup>5</sup>

### D. Procedure for Submitting an Experimental Variance Application

Applicants must use the following procedure when completing and submitting an application for an experimental variance to OSHA:

1. Complete this Experimental Variance Application form (printed or saved from OSHA's Variance Website), or develop their version of the application that meets the requirements of Section 6(b)6(c) of the Occupational Safety and Health (OSH) Act of 1970.
2. If completing a printed copy of the application form, use additional sheets when necessary to provide a full and detailed response.
3. The employer, or an authorized representative of the employer, must sign the completed variance application.
4. Submit the original of the completed application, as well as other relevant documents,<sup>6</sup> to:

By regular mail:

Assistant Secretary for Occupational Safety and Health  
Director, Office of Technical Programs and Coordination Activities  
Occupational Safety and Health Administration  
U.S. Department of Labor  
Room N-3655  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

By facsimile:

202-693-1644

Electronic (email):

[VarianceProgram@dol.gov](mailto:VarianceProgram@dol.gov)

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<sup>5</sup>Private-sector employers in the following states and territories are under Federal OSHA authority for occupational safety and health purposes: AL, AR, CO, CT, DC, DE, FL, GA, ID, IL, KS, LA, MA, ME, MO, MS, MT, ND, NE, NH, NJ, NY, OK, OH, PA, RI, SD, TX, WI, and WV. Territories: American Samoa, Guam, Trust Territory of the Pacific Islands, Virgin Islands, and Wake Island.

Most private-sector employers in the following 22 states and territories are under the authority of an OSHA-approved state occupational safety and health plan (State Plan states): AK, AZ, CA, HI, IA, IN, KY, MD, MI, MN, NC, NM, NV, OR, SC, TN, UT, VA, VT, WA, and WY. Territory: PR. Addresses for these states are available on the OSHA website at [www.osha.gov](http://www.osha.gov). (These states and territory, as well as CT, IL, NJ, NY, and VI, also provide coverage to public-sector employers under their state plans. Public-sector -- state and local government -- employers must apply to the applicable state for a variance.)

<sup>6</sup>Other documents may include photos, blueprints, drawings, models, reports, data, and other information and evidence necessary to describe the proposed alternative, and to demonstrate the level of employee protection it provides.

# NATIONAL DEFENSE VARIANCE APPLICATION <sup>1</sup>



OMB No. 1218-0265 / Expires: 3/31/2025

**Instructions:** Please review the supplemental information and instructions [Supplemental Information and Completion Instructions](#) prior to completing the variance application. For questions about this form or the variance process, contact OSHA at [VarianceProgram@dol.gov](mailto:VarianceProgram@dol.gov)

## Section I - Applicant Information

### 1. Applicant Company

Company Name: \_\_\_\_\_

Principal Address:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

### 2. Contact Information

#### a. Authorized Representative:

Company Representative's Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Address (if different from the company's principal address):

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

#### b. Primary point of contact with the company (if different from the authorized representative):

Point of Contact Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Address (if different from the company's principal address):

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

### 3. Multiple Site Addresses

#### a. Site Name:

Site address including:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

b. Site Name: \_\_\_\_\_

Site address including:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

c. Site Name: \_\_\_\_\_

Site address including:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

<sup>1</sup>Use of this form is voluntary.

## Section II - Support Information

4. Provide a detailed list of the standard(s) from which the applicant is requesting the national defense variance.

5. Explain in detail how the proposed variance, limitation, tolerance, or exemption is necessary and proper to avoid serious impairment to the national defense.

6. Describe how the applicant informed its workers of the application and their right to petition the Assistant Secretary for a hearing.<sup>2</sup>

7. If the applicant is requesting an Interim Order to use the alternative method until OSHA renders a decision on the variance application, attach a statement of facts and argument explaining why OSHA should grant such an Order.

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<sup>2</sup>Examples of how the applicant may inform its workers include: (1) Giving a copy of the application to their authorized representative; and (2) posting a statement giving a summary of the application and specifying where workers may examine a copy of it, at the place(s) where the applicant normally posts notices to workers (or, instead of a summary, posting the application itself).

8. The applicant certifies by the signature below that the information contained in the application is accurate and true to the best of the applicant's knowledge.

Signature of the authorized representative: \_\_\_\_\_

Print name: \_\_\_\_\_ Date: \_\_\_\_\_

**Paperwork Reduction Act Statement      OMB Control Number: 1218-0265**

According to the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 30 hours per response. This burden includes locating and assembling information required to complete the variance application, informing affected workers of the decision to seek a variance, completing the variance application, and assembling the application documents, but does not include hosting an OSHA site visit. The obligation to respond to this collection is voluntary. Information obtained from this form will be used to determine if a variance will be granted to the applicant. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Labor, OSHA, Office of Technical Programs and Coordination Activities, Room N-3653, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. OMB Control Number: 1218-0265.

## Supplemental Information and Instructions for Completing the National Defense Variance Application

Section 16 of the Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 651 *et seq.*) authorizes national defense variances granting reasonable variations, tolerances, and exemptions from Occupational Safety and Health Administration (OSHA) standards to avoid serious impairment of the national defense. If a national defense variance is in effect for more than six months, employers seeking the variance must notify their workers, and employees must be afforded an opportunity for a public hearing on the issues involved. An employer may apply for a national defense variance by following the regulatory requirements specified by 29 CFR 1905.12. Only Federal OSHA may grant national defense variances.<sup>3</sup> Sections A, B, C, and D below provide a brief summary of these requirements, detailed application form completion instructions, some common mistakes to avoid, and procedures and instructions for submitting a national defense variance application to OSHA.

### A. Summary of Requirements for Obtaining a National Defense Variance

An employer (or class or group of employers<sup>4</sup>) may request a national defense variance for a specific workplace(s). A national defense variance authorizes employer(s) reasonable variations, tolerances, and exemptions from compliance with the requirements of a standard when they can show that the proposed variance is necessary and proper to avoid serious impairment to the national defense. In addition, the employer must notify employees of the variance application, and of their right to petition OSHA for a hearing.

### B. Instructions for Completing the National Defense Variance Application

#### Section I: Application Information

1. and 2. Self-explanatory.
3. Provide the address(es) of all the location(s) of employment where the applicant would implement the national defense variance (if different from the company's principal address).

#### Section II: Support Information

4. through 7. Self-explanatory.
8. This form is to be signed by the applicant's authorized representative to certify that the information contained in the application is accurate and true to the best of the applicant's knowledge. Also, enter the printed name of the applicant's representative, and the date the authorized representative signed the application.

### C. Reviewing the National Defense Variance Application

Carefully review the variance application, and ensure that:

1. The application is complete and contains detailed descriptions for each item in the form, including the name and signature of the authorized representative;
2. The variance is not a request for a waiver from the requirements of a standard;

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<sup>3</sup>See 29 CFR 1952.8(b), which states: "No action by a state under a plan shall be inconsistent with action by the Secretary [on a national defense variance]."

<sup>4</sup>A class or group of employers in the same industry (such as members of a trade alliance or association) may apply jointly for a variance provided an authorized representative for each employer signs the application, and the application identifies each employer's affected facilities.

8. The applicant is not seeking the variance from a "definition" or from a "performance" standard (i.e., a standard that does not describe a specific action for meeting the requirements of the standard); and

9. If the application involves location(s) only in State Plan states, the employer must submit the application to Federal OSHA.<sup>5, 6</sup>

#### **D. Procedure for Submitting a National Defense Variance Application**

Applicants must use the following procedure when completing and submitting an application for a national defense variance to OSHA:

1. Complete this National Defense Variance Application form (printed or saved from OSHA's Variance Website), or develop their version of the application that meets the regulatory requirements of 29 CFR 1905.12.
2. If completing a printed copy of the application form, use additional sheets when necessary to provide a full and detailed response.
3. The employer, or an authorized representative of the employer, must sign the completed variance application.
4. Submit the original of the complete application, as well as other relevant documents,<sup>7</sup> to:

By regular mail:

Assistant Secretary for Occupational Safety and Health  
Director, Office of Technical Programs and Coordination Activities  
Occupational Safety and Health Administration  
U.S. Department of Labor  
Room N-3655  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

By facsimile:

202-693-1644

Electronic (email):

[VarianceProgram@dol.gov](mailto:VarianceProgram@dol.gov)

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<sup>5</sup>Private-sector employers in the following states and territories are under Federal OSHA authority for occupational safety and health purposes: AL, AR, CO, CT, DC, DE, FL, GA, ID, IL, KS, LA, MA, ME, MO, MS, MT, ND, NE, NH, NJ, NY, OK, OH, PA, RI, SD, TX, WI, and WV. Territories: American Samoa, Guam, Trust Territory of the Pacific Islands, Virgin Islands, and Wake Island.

Most private-sector employers in the following 22 states and territories are under the authority of an OSHA-approved state occupational safety and health plan (State Plan states): AK, AZ, CA, HI, IA, IN, KY, MD, MI, MN, NC, NM, NV, OR, SC, TN, UT, VA, VT, WA, and WY. Territory: PR. Addresses for these states are available on the OSHA web site at [www.osha.gov](http://www.osha.gov). (These states and territory, as well as CT, IL, NJ, NY, and VI, also provide coverage to public-sector employers under their state plans.)

<sup>6</sup>Only Federal OSHA may grant a national defense variance. (See 29 CFR 1952.8(b).)

<sup>7</sup>Other documents may include photos, blueprints, drawings, models, reports, data, and other information and evidence necessary to describe the proposed alternative and, to demonstrate the level of employee protection it provides.



# PERMANENT VARIANCE APPLICATION <sup>1</sup>

OMB No. 1218-0265 / Expires: 3/31/2025

**Instructions:** Please review the supplemental information and instructions [Supplemental Information and Completion Instructions](#) prior to completing the variance application. For questions about this form or the variance process, contact OSHA at [VarianceProgram@dol.gov](mailto:VarianceProgram@dol.gov)

## Section I - Applicant Information

### 1. Applicant Company

Company Name: \_\_\_\_\_

Principal Address: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

### 2. Contact Information

#### a. Authorized Representative:

Company Representative's Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Address (if different from the company's principal address):

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

#### b. Primary point of contact with the company (if different from the authorized representative):

Point of Contact Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Address (if different from the company's principal address):

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

### 3. Multiple Site Addresses

a. Site Name: \_\_\_\_\_

Site address including:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

b. Site Name: \_\_\_\_\_

Site address including:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

<sup>1</sup>Use of this form is voluntary. A variance from a "performance standard" is not appropriate and cannot be granted because a performance standard does not describe a specific means or method for meeting the requirements of the standard. A variance from a definition in a standard is not appropriate and cannot be granted because a definition is not an enforceable provision of the standard since it does not describe any actions, means, or specific methods for meeting the requirements of the standard.



c. Site Name: \_\_\_\_\_

Site address including:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

**Section II - Support Information**

4. List the OSHA standard(s) from which the applicant is requesting the permanent variance.

5. Describe the means to be used as an alternative for protecting employees from hazards as effectively as compliance with the standard, and how the proposed alternative would be at least as safe and healthful for employees as the existing requirements in the OSHA standard(s) from which the applicant is requesting the permanent variance.

6. By the signature entered below, the applicant certifies that it informed its employees of the variance application and their right to petition the Assistant Secretary for a hearing by using the means described below (place a check mark identifying the means selected):

- a. Giving a copy of the variance application to the authorized employee representative(s);
- b. Posting a statement giving a summary of the variance application and specifying where employees may examine a copy of it, at the place(s) where the applicant normally posts notices to employees (or, instead of a summary, posting the application itself); or
- c. Using other appropriate means (explain).

7. By the signature entered below, the applicant certifies the status of any outstanding OSHA or State Plan state<sup>2</sup> citation(s) as follows (place a check mark next to the item describing the current status):

- a. The applicant is not contesting any citations involving the standard that is the subject of this application;
- b. The applicant is taking measures to abate any such citations; or
- c. The applicant is contesting any such citations.

<sup>2</sup>The following are states and territories with approved state plans for private-sector employers: AK, AZ, CA, CT,\* HI, IA, IL,\* IN, KY, MD, MI, MN, NC, NJ,\* NM, NV, NY,\* OR, PR, SC, TN, UT, VA, VT, VI,\* WA, and WY. \*Plans cover public-sector employees only; the remaining states cover both public-sector and private-sector employees.

8. If the applicant is requesting an Interim Order to use the alternative method until OSHA renders a decision on the permanent variance application, attach a statement of facts and argument explaining why OSHA should grant such an Order.

9. If the variance application involves one (or more) states covered by Federal OSHA, and one (or more) State Plan state(s), provide the following information for each standard from which the applicant is requesting the permanent variance:

- a. A side-by-side comparison of the OSHA standard(s) and the state standard(s) that is/are identical to the OSHA standard;<sup>3</sup>
  
- b. By the signature entered below, the applicant certifies that it has not filed an application for an permanent variance on the same material facts for the same place(s) of employment with the State Plan state/states in question; and
  
- c. A statement identifying any pending citations issued to the applicant by a State Plan state for violating the state standard(s) that is/are the subject of this variance application.

10. The applicant certifies by the signature below that the information contained in the application is accurate and true to the best of the applicant's knowledge.

Signature of the authorized representative: \_\_\_\_\_

Print name: \_\_\_\_\_ Date: \_\_\_\_\_

<p><b>Paperwork Reduction Act Statement</b>      <b>OMB Control Number: 1218-0265</b></p> <p>According to the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 30 hours per response. This burden includes locating and assembling information required to complete the variance application, informing affected workers of the decision to seek a variance, completing the variance application, and assembling the application documents, but does not include hosting an OSHA site visit. The obligation to respond to this collection is voluntary. Information obtained from this form will be used to determine if a variance will be granted to the applicant. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Labor, OSHA, Office of Technical Programs and Coordination Activities, Room N-3653, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. OMB Control Number: 1218-0265.</p>
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<sup>3</sup>If the state standard(s) is/are not identical to the OSHA standard(s), the applicant must apply to the state for a permanent variance.

## Supplemental Information and Instructions for Completing the **Permanent Variance Application**

Section 6(d) of the Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 651 *et seq.*) authorizes permanent variances from Occupational Safety and Health Administration (OSHA) standards. An employer may apply for a permanent variance by following the regulatory requirements specified by 29 CFR 1905.11. Sections A, B, C, and D below provide a brief summary of these requirements, detailed instructions for completing the application form, some common application deficiencies to avoid, and procedures and instructions for submitting a permanent variance application to OSHA.

### **A. Summary of Requirements for Obtaining a Permanent Variance**

An employer (or class or group of employers<sup>4</sup>) may request a permanent variance for a specific workplace(s). A permanent variance authorizes the employer(s) to use an alternative means to comply with the requirements of a standard when they can prove that their proposed methods, conditions, practices, operations, or processes provide workplaces that are at least as safe and healthful as the workplaces provided by the OSHA standards from which they are seeking the permanent variance. In the application, the employer must demonstrate, by a preponderance of the evidence, that the proposed alternative means of compliance provides its workers with safety and health protection that is equal to, or greater than, the protection afforded to them by compliance with the standard(s) from which they are seeking the variance. In addition, the employer must notify employees of the variance application, and of their right to participate in the variance process. **Inability to afford the cost of complying with the standard is not a valid reason for requesting a permanent variance.**

### **B. Instructions for Completing the Permanent Variance Application**

#### **Section I: Application Information**

1. and 2. Self-explanatory.
3. Provide the address(es) of all the location(s) of employment where the applicant would implement the permanent variance (if different from the company's principal address).

#### **Section II: Support Information**

4. Self-explanatory.
5. Provide a detailed description of the conditions, practices, means, methods, operations, or processes the applicant would use as an alternative, and explain how the proposed alternative would be as safe and healthful for employees as meeting the existing requirements of the standard from which the applicant is requesting the permanent variance.
6. Provide certification as indicated that the applicant informed its employees of the variance application and their right to petition the Assistant Secretary for a hearing by placing a check mark on the form identifying the means selected. If the applicant checks "using other appropriate means," provide a detailed explanation of the alternate means used to notify employees of the application for a permanent variance.
7. Provide certification as indicated that the applicant is taking appropriate steps to resolve any OSHA or State Plan state citations pertaining to this application.
8. Self-explanatory.

4A class or group of employers in the same industry (such as members of a trade alliance or association) may apply jointly for a variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

9.
  - a. Self-explanatory.
  - b. Provide a statement that the applicant certifies that it has not filed an application for a permanent variance on the same material facts for the same place(s) of employment with the State Plan state/states in question.

10. This form is to be signed by the applicant's authorized representative to certify that the information contained in the application is accurate and true to the best of the applicant's knowledge. Also, enter the printed name of the applicant's authorized representative and the date the authorized representative signed the application.

### **C. Reviewing the Permanent Variance Application**

Carefully review the variance application, and ensure that:

1. The application is complete and contains detailed descriptions for each item in the form, including the name and signature of the authorized representative;
2. The variance is not a request for an exemption or waiver from the requirements of a standard;
3. The variance is not a request for review and approval of a design or product developed for manufacture and commercial use;
4. The applicant is not seeking the variance from a "definition" or from a "performance" standard (i.e., a standard that does not describe a specific action for meeting the requirements of the standard); and
5. If the application involves location(s) in State Plan states, that it also includes a state or states under Federal OSHA authority.<sup>5</sup>

### **D. Procedure for Submitting a Permanent Variance Application**

Applicants must use the following procedure when completing and submitting an application for a permanent variance to OSHA:

1. Complete this Permanent Variance Application form (printed or saved from OSHA's Variance Website), or develop their version of the application that meets the regulatory requirements of 29 CFR 1905.11.
2. If completing a printed copy of the application form, use additional sheets when necessary to provide a full and detailed response.
3. The employer, or an authorized representative of the employer, must sign the completed variance application.
4. Submit the original of the completed application, as well as other relevant documents,<sup>6</sup> to:

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<sup>5</sup>Private-sector employers in the following states and territories are under Federal OSHA authority for occupational safety and health purposes: AL, AR, CO, CT, DC, DE, FL, GA, ID, IL, KS, LA, MA, ME, MO, MS, MT, ND, NE, NH, NJ, NY, OK, OH, PA, RI, SD, TX, WI, and WV. Territories: American Samoa, Guam, Trust Territory of the Pacific Islands, Virgin Islands, and Wake Island.

Most private-sector employers in the following 22 states and territories are under the authority of an OSHA-approved state occupational safety and health plan (State Plan states): AK, AZ, CA, HI, IA, IN, KY, MD, MI, MN, NC, NM, NV, OR, SC, TN, UT, VA, VT, WA, and WY. Territory: PR. Addresses for these states are available on the OSHA web site at [www.osha.gov](http://www.osha.gov). (These states and territory, as well as CT, IL, NJ, NY, and VI, also provide coverage to public-sector employers under their state plans. Public-sector -- state and local government -- employers must apply to the applicable state for a variance.)

<sup>6</sup>Other documents may include photos, blueprints, drawings, models, reports, data, and other information and evidence necessary to describe the proposed alternative, and to demonstrate the level of employee protection it provides.

By regular mail:

Assistant Secretary for Occupational Safety and Health  
Director, Office of Technical Programs and Coordination Activities  
Occupational Safety and Health Administration  
U.S. Department of Labor  
Room N-3655  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

By facsimile:

202-693-1644

Electronic (email):

[VarianceProgram@dol.gov](mailto:VarianceProgram@dol.gov)



# TEMPORARY VARIANCE APPLICATION <sup>1</sup>

OMB No. 1218-0265 / Expires: 3/31/2025

**Instructions:** Please review the supplemental information and instructions [Supplemental Information and Completion Instructions](#) prior to completing the variance application. For questions about this form or the variance process, contact OSHA at [VarianceProgram@dol.gov](mailto:VarianceProgram@dol.gov)

## Section I - Applicant Information

### 1. Applicant Company

Company Name: \_\_\_\_\_

Principal Address:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

### 2. Contact Information

#### a. Authorized Representative:

Company Representative's Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Address (if different from the company's principal address):

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

#### b. Primary point of contact with the company (if different from the authorized representative):

Point of Contact Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Address (if different from the company's principal address):

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

### 3. Multiple Site Addresses

a. Site Name: \_\_\_\_\_

Site address including:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

b. Site Name: \_\_\_\_\_

Site address including:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

c. Site Name: \_\_\_\_\_

Site address including:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

<sup>1</sup>Use of this form is voluntary.

**Section II - Support Information**

4. List the newly published OSHA standard(s) from which the applicant is requesting the temporary variance.

5. Provide a statement of when the applicant expects to be able to comply with the standard(s), and describe in detail what steps the applicant has taken and will take (during the period of the temporary variance), with specific dates when appropriate, to come into compliance as quickly as possible with the new standard(s) from which the applicant is requesting the temporary variance.

6. Select one or more of the condition(s) specified below to describe why the applicant was unable to comply with the new standard(s) by its/their effective date:

\_\_\_\_\_ a. Unavailability of technical or professional personnel. (Explain in detail.)

\_\_\_\_\_ b. Unavailability of material and/or equipment. (Explain in detail.)

\_\_\_\_\_ c. Inadequate time allowed to complete the necessary construction or alteration of facilities. (Explain in detail.)

7. Provide the names, occupations, and contact information of qualified person(s) who can confirm the applicant's explanation and assertion that it is unable to comply with the new standard(s) by its/their effective date.

8. By the signature entered below, the applicant certifies that it:

- a. Is taking all available steps to safeguard its workers against the hazards covered by the standard(s); and
- b. Has an effective program for coming into compliance with the standard(s) as quickly as possible.

Attach a detailed description of the steps taken to safeguard workers against the hazards covered by the standard.

9. By the signature entered below, the applicant certifies that it informed its employees of the variance application and of their right to petition the Assistant Secretary for a hearing by using one or more of the means described below (place a check mark identifying the means selected):

- a. Giving a copy of the temporary variance application to the authorized employee representative(s);
- b. Providing instructions to its employees concerning their right to petition the Assistant Secretary for a hearing;
- c. Alternatively, posting a statement giving a summary of the application, informing employees of their right to petition the Assistant Secretary for a hearing, and specifying where its employees may examine a copy of the temporary variance application (at the place(s) where the applicant normally posts notices to employees or, instead of a summary, posting the application itself).
- d. If the applicant used an alternate means (other than the means specified in the statements (a), (b) and/or (c) above) to inform its employees of the application and their right to petition the Assistant Secretary for a hearing, then attach a detailed description of the alternate means.

10. If the variance application involves one (or more) states covered by Federal OSHA, and one (or more) State Plan state(s),<sup>2</sup> provide the following information for each standard from which the applicant is requesting the temporary variance:

- a. A side-by-side comparison of the OSHA standard(s) and the state standard(s) that is/are identical to the OSHA standard;<sup>3</sup>
- b. A statement certifying that the applicant has not filed an application for a temporary variance on the same material facts for the same place(s) of employment with the State Plan state/states in question; and
- c. A statement identifying any pending citations issued to the applicant by a State Plan state for violating the state standard(s) that is/are the subject of this variance application.

11. By the signature below, the applicant certifies that the status of any outstanding State Plan state citation(s) as follows (place a check mark next to the item describing the current status):

- a. The applicant is not contesting any citations involving the standard(s) that is/are the subject of this application.
- b. The applicant is taking measures to abate this/these citation(s).
- c. The applicant is contesting a citation involving the standard in question.

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<sup>2</sup>The following are states and territories with approved state plans: AK, AZ, CA, CT,\* HI, IA, IL,\* IN, KY, MD, MI, MN, NC, NJ,\* NM, NV, NY,\* OR, PR, SC, TN, UT, VA, VT, VI,\* WA, and WY. \*Plans cover public-sector employees only; the remaining states cover both public-sector and private-sector employees.

<sup>3</sup>If the state standard(s) is/are not identical to the OSHA standard(s), the applicant must apply to the state for an temporary variance.



12. If the applicant is requesting an Interim Order to use the alternative method until OSHA renders a decision on the temporary variance application, attach a statement of facts and argument explaining why OSHA should grant such an Order.

13. The applicant certifies by the signature below that the information contained in the application is accurate and true to the best of the applicant's knowledge.

Signature of the authorized representative: \_\_\_\_\_

Print name: \_\_\_\_\_ Date: \_\_\_\_\_

**Paperwork Reduction Act Statement      OMB Control Number: 1218-0265**

According to the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 30 hours per response. This burden includes locating and assembling information required to complete the variance application, informing affected workers of the decision to seek a variance, completing the variance application, and assembling the application documents, but does not include hosting an OSHA site visit. The obligation to respond to this collection is voluntary. Information obtained from this form will be used to determine if a variance will be granted to the applicant. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Labor, OSHA, Office of Technical Programs and Coordination Activities, Room N-3653, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. OMB Control Number: 1218-0265.

## Supplemental Information and Instructions for Completing the Temporary Variance Application

Section 6(b)(6)(A) of the Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 651 *et seq.*) authorizes temporary variances from Occupational Safety and Health Administration (OSHA) standards. Employers may apply for a temporary variance by following the regulatory requirements specified by 29 CFR 1905.10. Sections A, B, C, and D below provide a brief summary of these requirements, detailed instructions for completing the application form, some common application deficiencies to avoid, and procedures and instructions for submitting a temporary variance application to OSHA.

### A. Summary of Requirements for Obtaining a Temporary Variance

An employer (or class or group of employers<sup>4</sup>) may request a temporary variance for a specific workplace(s). A temporary variance authorizes an employer short-term (i.e., limited time) relief from a standard when the employer cannot comply with newly published OSHA requirements by the prescribed effective date because the necessary construction or alteration of the facility cannot be completed in time, or when technical personnel, materials, or equipment are temporarily unavailable. To be eligible for a temporary variance, an employer must implement an effective compliance program as quickly as possible. In the meantime, the employer must demonstrate to OSHA that it is taking all available steps to safeguard workers. **Inability to afford the cost of complying with the standard is not a valid reason for requesting a temporary variance.** In addition, the employer must notify employees of the variance application, and of their right to participate in the variance process.

### B. Instructions for Completing the Temporary Variance Application

#### Section I: Application Information

1. and 2. Self-explanatory.

3. Provide the address(es) of all the location(s) of employment where the applicant would implement the temporary variance (if different from the company's principal address).

#### Section II: Support Information

4. through 7. Self-explanatory.

8. Provide certification as indicated that the applicant:

a. Is taking all available steps to safeguard its workers against the hazards covered by the standard(s); and

b. Has an effective program for coming into compliance with the standard(s) as quickly as possible. Attach a

detailed description of the steps taken to safeguard workers.

9. Provide certification as indicated that the applicant informed its employees of the variance application and their right to petition the Assistant Secretary for a hearing by using one or more of the means selected from the list:

a. Giving a copy of the temporary variance application to the authorized employee representative(s);

b. Providing instructions to its employees concerning their right to petition the Assistant Secretary for a hearing;

c. Alternatively, posting a statement giving a summary of the application, informing employees of their right to petition the Assistant Secretary for a hearing, and specifying where its employees may examine a copy of the temporary variance application (at the place(s) where the applicant normally posts notices to employees, or instead of a summary, posting the application itself); and

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<sup>4</sup>A class or group of employers in the same industry (such as members of a trade alliance or association) may apply jointly for a variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

- d. If the applicant used means other than the means specified in statements (a), (b), and/or (c) to inform its employees of the application and their right to petition the Assistant Secretary for a hearing, attach a detailed description of such alternate means.

10.
  - a. Self-explanatory.
  - b. A statement certifying that the applicant has not filed an application for a temporary variance on the same material facts for the same place(s) of employment with the State Plan state/states in question; and
  - c. Self-explanatory.

11. and 12. Self-explanatory.

13. This form is to be signed by the applicant's authorized representative to certify that the information contained in the application is accurate and true to the best of the applicant's knowledge. Also, enter the printed name of the applicant's authorized representative and the date the authorized representative signed the application.

### **C. Reviewing the Temporary Variance Application**

Carefully review the variance application, and ensure that:

1. The application is complete and contains detailed descriptions for each item in the form, including the name and signature of the authorized representative;
2. The applicant is not seeking the variance from a "definition" or from a "performance" standard (i.e., a standard that does not describe a specific action for meeting the requirements of the standard);
3. The applicant submits the application to OSHA prior to the date that the new standard in question goes into effect; and
4. If the application involves location(s) in State Plan states, that it also includes a state or states under Federal OSHA authority.<sup>5</sup>

### **D. Procedure for Submitting a Temporary Variance Application**

Applicants must use the following procedure when completing and submitting an application for a temporary variance to OSHA:

1. Complete this Temporary Variance Application form (printed or saved from OSHA's Variance Web site), or develop their version of the application that meets the regulatory requirements of 29 CFR 1905.10.
2. If completing a printed copy of the application form, use additional sheets when necessary to provide a full and detailed response.
3. The employer, or an authorized representative of the employer, must sign the completed variance application.
4. Submit the original of the completed application, as well as other relevant documents,<sup>6</sup> to:

---

<sup>5</sup>Private-sector employers in the following states and territories are under Federal OSHA authority for occupational safety and health purposes: AL, AR, CO, CT, DC, DE, FL, GA, ID, IL, KS, LA, MA, ME, MO, MS, MT, ND, NE, NH, NJ, NY, OK, OH, PA, RI, SD, TX, WI, and WV. Territories: American Samoa, Guam, Trust Territory of the Pacific Islands, Virgin Islands, and Wake Island.

Most private-sector employers in the following 22 states and territories are under the authority of an OSHA-approved state occupational safety and health plan (State Plan states): AK, AZ, CA, HI, IA, IN, KY, MD, MI, MN, NC, NM, NV, OR, SC, TN, UT, VA, VT, WA, and WY. Territory: PR. Addresses for these states are available on the OSHA web site at [www.osha.gov](http://www.osha.gov). (These states and territory, as well as CT, IL, NJ, NY, and VI, also provide coverage to public-sector employers under their state plans. Public-sector – state and local government – employers must apply to the applicable state for a variance.)

<sup>6</sup>Other documents may include photos, blueprints, drawings, models, reports, data, and other information and evidence necessary to describe the proposed alternative, and to demonstrate the level of employee protection it provides.

By regular mail:

Assistant Secretary for Occupational Safety and Health  
Director, Office of Technical Programs and Coordination Activities  
Occupational Safety and Health Administration  
U.S. Department of Labor  
Room N-3655  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

By facsimile:

202-693-1644

Electronic (email):

[VarianceProgram@dol.gov](mailto:VarianceProgram@dol.gov)